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CRIMINAL POLICY IN CONFLICT INDIGENOUS LAND

Anak Agung Gde Bagus Mahendra Putra, Simon Nahak and I Ketut Widia
Magister of Notary, Universitas Warmadewa, Denpasar-Bali, Indonesia

aamahendraputra86@gmail.com

Abstract

This study aims to analyze the criminal policy in the field of land against customary land conflicts and the criminal policy regarding efforts to overcome conflicts over customary land tenure. The method used is normative legal research with a statutory approach, a library approach, a case approach and a concept approach. The materials used are primary, secondary and tertiary data sources, and then analyzed using legal hermeneutic interpretation techniques. As a result of analysis, it shows that the Criminal Policy in the Field of Land Against Customary Land Conflict is the act of the perpetrators both individually and in groups can result in losses not harmonizing the local indigenous community, there is a criminal nature against the law so that there are perpetrators subject to criminal sanctions in the form of basic penalties namely; as regulated and threatened in Article 10 of the Criminal Code in the form of basic sentences namely the death penalty, imprisonment, confinement and fines and additional penalties for revocation of certain rights, the seizure of certain items and the announcement of a judge's decision. In conclusion, the criminal aspect in every customary conflict is always trailing because usually in customary conflict there are parties who force the will to intersect with customary issues so that they can disturb public order until there is a criminal nature against the law.

Keywords: Conflict; Criminal Policy; Customary Land

1. INTRODUCTION

Various conflicts that occur may be as part of social change that is always accompanied by a process of change, or social mobility that brings conflict of values, which results in conflict. Given the events in Bali, since the 1998 reform era, residents of villages in Bali appear to experience frequent conflicts, compared to before, both internal and inter-village conflicts. Conflicts between service villages that previously almost never happened, also began to emerge later.

In addition to political, economic and social conflicts, *adat* conflicts also occur in Bali. We can still remember the customary conflicts in *banjar* Bangkilesan with *Banjar Adat Abianseka*, Gianyar (2003) *Banjar Adat Kemenuh* with *Banjar Adat Tegenungan*, Blahbatuh, Gianyar (2002),

Banjar Adat Guwang with *Banjar Adat Ketewel*, Sukawati, Gianyar (2003). Also the conflict between Ulakan Village with Antiga Karangasen Village (2005) and many others. *Adat* conflicts are indeed most prevalent in Gianyar Regency. The distribution of conflicts occurs in almost all districts, and almost every year. During 2001-2007, 42 (forty two) prominent conflict cases were recorded, an average of 6 (six) cases in each district (Suartika, 2010).

It is said that the conflict is prominent because it has emerged as an open conflict, which has the potential to disturb public order, peace, and peace. Beyond these conflicts, there are still many cases, especially individual conflicts against individuals with a variety of problems that are not recorded in the District, the head

of security office, the Village Assembly, or in the Police because they have been resolved at the *banjar* or village level, so they do not appear to surface as a case that threatens public order.

Conflict as a natural phenomenon that is philosophically natural can actually be avoided and its existence can be prevented by promoting comprehensive conflict management. It's not easy, and it's also not instant fast. But the empirical facts of the field provide clues and evidence that conflicts can be prevented and resolved very well. *Pancasila* as a philosophical and national outlook on life is the main reference and can be used as a guide in resolving conflict (Kaelen, 2008). In a previous research, Raharjo (2010) found conflicts involving the follow-up and victims of criminal acts in indigenous communities in Indonesia, a form taken as an intermediary known as a traditional village or a contested tribe. His results indicate that the settlement of customary law is an inspiration for many modern mediation programs and includes defense mediation (Raharjo, 2010). Other research by (Hasan, 2007) have found forms that are in accordance with the legal values that live on *adat* Badamai applied in the community with the presence of family ties, solidarity values, the value of togetherness and the idea of a specific code of conduct in the Badamai community in resolving disputes. In (Utsman, 2013) research on the fishing village community *Saka*, found from generation to generation, they manage the conflicts using deliberation to reach consensus. The form of conflict management of Hp2S using "deliberation to reach consensus" is mostly dominated by men as the role models (the elders) in each group owning *Saka*.

Based on background, in every customary land conflict there is a regulation of criminal sanctions and legal consequences for perpetrators of crimes and violations of criminal law because the need for land is increasing so that every

local community member of the Indigenous Village intends to commit a crime to defend his rights or can grabbing other people's land rights. In general, this research was conducted to find out criminal policies in customary land conflicts in accordance with the laws and regulations that govern them, Therefore, this research is limited which aims to analyze the criminal policy in the field of land against customary land conflicts and the criminal policy regarding efforts to overcome conflicts over customary land tenure.

2. METHODS

The research is using normative legal research. The normative legal is used because there are conflicts of legal norms in terms of dealing with customary conflicts by customary village institutions. A statutory approach, a literature approach, a case approach and a concept approach are used in this study.

3. RESULT AND DISCUSSION

Basically, the customary criminal law system is substantially based on the values contained in a society characterized by the principle of kinship, *religius*, communal with a starting point not based on individual justice, but justice together. The logical consequence of such a dimension is that settlement in an indigenous community is based on a dimension of resolution that brings harmony and togetherness. Strictly speaking, customary criminal law emphasizes the existence of restoration with a state of shock due to violations due to violations committed by perpetrators. Soepomo said in the customary criminal law system the aim of imposing customary sanctions as applicable and maintained on an indigenous community is not as a retaliation so that violators become deterrent but is to restore the legal balance disturbed by the occurrence of an *adat* violation. The balance of the law also includes the balance between the born world and the unseen world.

The conviction of a sentence imposed by a judge is a process of adjudicating with the evidence starting point, the process of proof, the law of proof and the legal provisions of the proceeding. This process of the judge plays an important role to concretize the criminal sanctions contained in the legislation with the conviction of the perpetrators starting the decision. Criminal imprisonment by the judge considers all aspects of both his actions, the perpetrators (*daad-dader strafrecht*), the purpose of punishment and considers the balance of interests between the perpetrators, the nation and state, victims, jurisprudence and for the sake of justice based on a supreme God.

In principle, the concept of the 2008 Criminal Code Bill as well as the last 2016 Penal Code Bill formulates the objective of criminal punishment. This aspect and dimension is a fairly representative progress in Indonesian criminal law. The provisions of Article 54 paragraph (1) letter c of the Criminal Code Bill stipulate, "criminal justice aims at resolving conflicts caused by criminal acts, restoring balance and bringing a sense of peace in the community", so that in order to fulfill this dimension concretely in law enforcement practices it has also determined the existence of additional criminal existence as stipulated in Article 67 paragraph (1) letter e in the form, "fulfillment of local customary obligations and / or obligations according to the law that lives in the community". The principle, the judge handed down a criminal "fulfillment of obligations according to the law that lives in the community" if the perpetrator has fulfilled the provisions of Article 1 paragraph (3), (4) of the Criminal Code Bill which is mentioned as a customary crime. Then, the imposition of additional crimes may be imposed together with the main criminal offense, as a criminal that stands alone or can be imposed together with other additional crimes.

Additional criminal conceptions in the form of fulfillment of local customary obligations and / or obligations according

to law that live in the community or revocation of rights can be dropped even though it is not listed in the formulation of a criminal offense. The existence of additional criminal offenses is intended to add to the basic penalties imposed and essentially facultative. Strictly speaking, the judge is free in determining additional crimes either together with the main criminal or as a stand-alone criminal or also imposed together with other additional crimes, although it is not listed as a threat in the formulation of a criminal offense.

If examined intensively, in detail and detail as the basis for the authority of judges to impose customary sanctions in the form of fulfilling local customary obligations and / or obligations according to the law that lives in the community "is confirmed by the provisions of Article 100 paragraph (1) of the determining bill," taking into account the provisions of Article 1 paragraph (4) the judge can determine the fulfillment of obligations according to the law that lives in the community ", then if the perpetrator's act is a customary criminal act as stipulated in Article 1 paragraph (3), then the imposition of a criminal sanction by the judge is in the form of fulfilling local customary obligations and / or obligations according to law (those living in the community as referred to in paragraph (1) shall constitute the main criminal or the principal.

The logical consequence of the above dimensions of context can be stated that if the judge adjudicates a customary criminal act so that the sentence imposed is proportional can be accepted and understood by both the community and the perpetrator, the judge must consider criminal guidelines and criminal objectives.

The provisions of Article 55 paragraph (1) of the 2008 Penal Code Draft Law as referred to in the 2016 Penal Code Draft concerning criminal guidelines that are mentioned in the criminal prosecution consider:

Mistake makers of crime;

Motive and purpose of committing a crime;

The inner attitude of the makers of criminal acts;

Is the crime committed by planning;

How to commit a crime;

The attitude and actions of the maker after committing a crime;

Criminal influence on the future of the criminal offender;

Influence of criminal acts against the victim or the victim's family;

Utilization of victims and / or their families; and / or

The public's view of the crime committed.

Then the provisions of Article 54 paragraph (1) determine the purpose of punishment aimed at:

Prevent criminal offenses by enforcing legal norms for the protection of the community;

Promoting the convicted person by holding coaching so that he becomes a good and useful person;

Resolving conflicts caused by crime, restoring balance, and bringing a sense of peace in society;

Freeing guilt on the convict.

When talking about the effectiveness of the law, the conversation cannot be released with a question, whether sanctions in the criminal system have a significant impact on the perpetrators of crime. Because of this, various opinions about criminalization were raised experts. There are many known systems of punishment, but the most prominent are two namely, punishment for retaliation, and the second is conviction for coaching.

The sentencing system (the sentencing system) is legislation relating to sanctions and punishment (Arief, 1998). The definition of punishment is broadly interpreted as a process of giving or imposing a crime by a judge, then it can

be said that the criminal system includes the entire statutory provisions governing how the criminal law is enforced or operationalized concretely so that a person is subject to sanctions (criminal law). This means that all statutory regulations regarding Substantive Criminal Law, Formal Criminal Law and Criminal Procedure Law can be seen as a unified criminal system.

Basically, the problem of criminal prosecution or punishment is divided into two theories. This theory is very commonly called the theory of punishment. Two theories that can be used as reference material regarding the purpose of punishment are: The Retribution Theory or retribution theory states that punishment has several purposes. The objectives of the conviction are:

The purpose of punishment is solely for retaliation. Vengeance is the main objective and in it does not contain the means of other objectives for example for the welfare of society. Mistakes are the only condition for a crime. The criminal must be adjusted to the wrongdoer. Criminal hindsight is a genuine reproach and its purpose is not to correct, educate, or re-populate the offender.

Utilitarian Theory or Purpose Theory

The difference with the theory of retribution or the theory of retribution, utilitarian theory states that punishment has the following objectives:

Prevention

Prevention is not the end goal just as saraba to achieve higher goals, namely human welfare. Only lawbreakers can be blamed on the perpetrators (for example, deliberately culpa) who fulfill the requirements for a criminal offense. The criminal code must be established based on its purpose as a tool for crime prevention.

Criminal looking forward (prospective in nature) a criminal can contain an element of reproach, but neither the element of reprimand or the element of retaliation

cannot be accepted if it does not help prevent crime for the benefit of the people's welfare. Both the retribution theory and the utilitarian theory are basically the same in giving criminal sanctions / penalties to criminals or violators of the law, it's just the nature of the two theories that distinguish them.

Criminal guidelines specifically in the form of the public's view of criminal acts committed and the purpose of punishment in particular in the form of resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of peace in society are dimensions that must be considered by judges in passing decisions. If this element is considered, the judge's decision will also thoroughly consider the dimensions of legal justice, moral justice and social justice.

Criminal in the form of fulfilling local customary obligations and / or obligations according to the law that lives in the community are considered equivalent or comparable to criminal fines of category I with a total amount of Rp. 1,500,000.00 (one million five hundred thousand rupiah) and if the criminal is in the form of fulfilling local customary obligations and / or obligations according to the law that live in the community, the convicted person may be subject to a substitute criminal for a criminal fine in the form of criminal compensation. Barda Nawawi Arief stated that the additional crime in the form of fulfillment of the local customary authority and / or obligations according to the law that lives in the community in the draft of the Criminal Code Bill is one aspect of protection for victims where this type of crime can basically also be seen as a form of compensation for victims. It's just that the victims here are indigenous peoples.

Logical consequences and the existence of a firm legal basis for the existence of living law (customary criminal law) will give duties, responsibilities and a relatively heavier burden to the judge to better understand and explore the legal values that live in society. Judges must really

understand the feelings of the community. The condition of the community, especially the pluralistic Indonesian society with various kinds of customs, traditions and cultures that are still maintained as living laws. Soedarto stated that the eyes, minds and feelings of judges must be sharp in order to be able to capture what is happening in the community, so that their decisions don't sound discordant. The judge with all his personality must be responsible for the veracity of his decision both formally and materially.

Any person or legal entity may be subject to criminal sanctions if there is an element against the criminal law because it has been proven to committed a crime. Examples of criminal offenses in the land sector include customary land. Article 12 paragraph (1) of the 2016 National Penal Code Draft determines:

"A criminal offense is an act of doing or not doing something, which by law is threatened with Crimes".

Based on the description, the theory of authority and criminal law policy is used as an analysis of the regulation / formulation of criminal law as it is known that the regulation of criminal law sanctions in the field of land is regulated both in the Criminal Code (KUHP) as regulated in Chapter XII Falsifying Letters Article 263 - 276, Article 372 on Embezzlement, Article 378 regarding Yuncto Fraud Article 55. The arrangement in the formulation of several articles "... with a sentence of imprisonment forever ... months ... years"

Special Law on land, namely Law Number 5 of 1960 concerning Basic Regulations on Agrarian Matters Chapter III Criminal Provisions Article 52 Paragraphs (1), (2) and (3), which at its beginning determine "Whoever intentionally violates the provisions in Article 15 shall be liable to a maximum sentence of 3 months imprisonment and / or a maximum fine of Rp. 10,000

Article 15 determines "maintaining the land including increasing its fertility and preventing its damage is the obligation of

every person, legal entity or agency that has legal relations with the land, taking into account the economically weak party".

Simon Nahak writes "The provisions in the formulation of articles of the Criminal Code provisions as well as in the LoGA above prove the ambiguity of legal norms because they do not formulate the minimum penalty threat so the formulation of the provisions of such articles is not based on the principle of justice and legal certainty because the provisions do not formulate the threat of punishment and minimum fines, then as an inhibiting factor for law enforcement because it does not provide a deterrent effect to the perpetrators of criminal acts with the sentence too minimal or mild " (Nahak, 2017).

The description of the opinion in the article emphasizes that because there is a blurring of criminal law norms specifically related to criminal sanctions both in the Criminal Code and in the LoGA, based on criminal law policy theory in the Criminal Code Bill and the PA Bill in the future it should be formulated with the threat of penalties and minimum and maximum fines.

Based on the discussion of Chapter IV, the theory used to analyze the discussion of Chapter IV is the theory of legal certainty and the theory of criminal law. that laws that can resolve conflicts over customary land in Bali must have certainty. Law, which is clear or consistent, easily obtained legal rules issued by the state power in this case both the government and the Customary Village.

Besides that, the resolution of customary land conflicts in Bali is also endeavored to be resolved through non-penalty (consensus agreement) involving village manners in *paruman*, decided based on the results of *paruman* so that it can be accepted by all parties (village manners).

As explained from the conflict theory, every conflict must have a solution so that the conflict can be resolved elegantly. The

factors that influence the resolution of land conflicts in Desa Serat Seraya, Karangasem Regency are:

Community Culture

As conveyed by sociologists, it turns out that community habits that have been carried out down and down greatly affect the speed of the settlement of conflicts with nuances of *adat* in the community. If the culture or tradition that has become a culture of temperamental society, is quick to anger, likes to consume alcoholic beverages or alcohol, likes to fight, then conflict resolution becomes more difficult when compared with the habits of the people who prioritize deliberation to reach consensus. Community culture should be emphasized more on efforts to prevent conflicts. People who have a culture of tolerance and always deliberate if there is a potential for conflict, then the conflict is very easy to resolve. For people in Bali based on existing documents, it turns out to have a community culture that always puts forward deliberation for consensus. Every problem that has the potential to cause conflict is always discussed in order to reach consensus so that the potential for conflict does not develop into a prolonged conflict. But in connection with the customary land dispute that is the study of this research, it arises because the community did not know beforehand that an attempt was made to register land rights with the local Defense Agency Office. So that some parts of the land have as if changed ownership into private property. The deliberation effort to reach consensus has actually been carried out, but it has not yet reached an agreement until finally the problem is brought to the realm of law, namely through a civil suit to court.

One proof that the people in Bali prioritize deliberation to reach consensus in the context of resolving disputes relating to customary land can be seen indications, namely:

The community is not arrogant in damaging both public facilities and private

facilities belonging to community members who certify *Pelaba Pura* land.

When there is a hearing at the venue conducted by the Denpasar State Administrative Court, the community is not anarchist just by sitting, sitting, facing the seizure officers and judge in the context of conducting an on-site hearing.

People in Bali always obey the directions of *Kelian Adat Desa* as a form of obedience to the Local Laws that live in the community. In this case *Kelian Desa Adat* is considered as a symbol of the customary rules themselves.

In order to derail and cancel the certificate of ownership over land issued by the Karangasem Regency Defense Agency, the Balinese have not armed themselves with sharp weapons. They just sat in the courtyard of the Denpasar Administrative Court without making a speech.

The people did not dare to oppose the officers when the security forces directed, set the course of delivering their aspirations both in Bali itself and at the Court's office.

Community Customary Authority

Traditional figures in Bali are often called *Kelian Adat*, or *Bendesa Adat* are figures who are believed to have high charisma so that they are trusted and respected by the community. Therefore it is not surprising like said by indigenous community leaders is always heeded and carried out by local residents. In terms of efforts to approach preventing and handling conflicts by leaders or community leaders are categorized in two dimensions, namely:

- Cooperation or non-cooperation,
- Firm or indecisive

Community leaders should be maximally worked to prevent potential conflicts. For this there are 5 (five) ways to prevent conflicts from occurring:

Creating community creativity in addressing a conflict

Make social changes conducive to post-conflict

Establish a joint committee in groups that have conflict

Preventing repeated conflicts that can harm many parties

Improve the social function of the family based on the shared values of wisdom

All parties really do not want to deal with "conflict". Because of that all elements of society are required and must try to prevent conflicts from occurring in a social environment, but if a conflict has already occurred, then this is the solution:

Abitration, that is immediately terminated by a third party gives a decision and is accepted and obeyed by both parties. Events like this are seen every day and repeatedly anywhere in society, are spontaneous and informal. If a third party cannot be elected then the government usually appoints a court.

Conciliation, which is an attempt to bring together the wishes of the parties to the dispute to reach mutual agreement. For example the committee is still completing the labor force formed by the Department of Labor that charge to resolving issues of wages, working hours, labor welfare, holidays, and others.

Stalemante, which is a condition when the two opposing parties have a balanced force, then stop at a point of attacking each other. This situation occurs because both parties may again to go forward or backward. For example: gun battles between the United States and the Soviet Union during the Cold War.

Adjudication, which is the settlement of a case or dispute in court.

Elimination, which is the resignation of one of the parties involved in the conflict, which is expressed by saying, among others: we give in, we leave, and so on.

Sejugation or domination, that is, the person or party who has the greatest power to be able to force the person or other party to obey it. Of course this

method is not a satisfactory solution for the parties involved.

The Authority of the Police Agency in Social Conflicts

The authority of the Police in dealing with conflicts of *adat* is only limited if there is an act that fulfills elements of criminal offense, such as falsification of documents, vandalism, arson, or until there is a murder. Law enforcement officials will not enter the main essence of the cause of the conflict. Everything is returned to the mechanism of customary procedure itself in deliberation to reach an agreement.

Desa Pakraman Seraya community, for example, is one community that has people from diverse cultures. The population consists of less than 2526 inhabitants, with a variety of customs and cultures. In such conditions it is expected that there is harmony in every aspect of life so as to create a comfortable, orderly, and peaceful atmosphere. This diversity certainly not only brings various benefits but also saves the potential for conflict in it, especially conflicts horizontally involving community members in terms of ethnicity, religion, community organizations, and so forth. Diversity has the potential to trigger conflict when diversity is not managed properly.

Associated with national conditions, a pluralistic nation like Indonesia can only live together peacefully if they discard the psychological potential that is a medium for growing tolerance. According to tradition, coercion, uniformity and injustice have proven to be a source of conflict that threatens the integrity of our nation. Conflicts contain a very broad spectrum of understanding, ranging from small conflicts between individuals, conflicts between families to conflicts between villages and even to mass conflicts involving several large groups, both in regional ties or primordial ties.

In the effort to handle conflicts, social control is one of the effective ways to prevent and overcome conflicts. Through this, each individual, group or community

is directed to be able to behave in harmony in accordance with the norms and values that exist in society, So as to create a safe, orderly and comfortable atmosphere in the community. The central role in social control is held by the state as an institution that has the authority to regulate. Conflict management is a series of activities carried out systematically and planned in situations and events both before, during and after a conflict that includes conflict prevention, cessation of conflict, and post-conflict recovery. Police Discretion in Handling Social Conflict: Position of Internal Police Regulations in Handling Conflict Within Legislation Regulations direct action and compiling a series of policies and regulations in carrying out social control. The government in this case includes the president along with the regional government namely governors, regents, mayors and regional apparatus.

In addition, Law Number 7 of 2012 concerning Handling of Social Conflict (the Law on Handling Social Conflict), states that the police also have a central role in handling conflicts. The law emphasizes that the police are a state instrument whose duty is to maintain security, public order, enforce the law and provide protection, protection and public service. In addition to having a central role in conflict resolution efforts, police officers in this case also have preventive functions that are inherent in their responsibilities and authority in reading potential conflicts in the community.

For example in terms of the authority of the Police to handle community disputes, it can be seen in Telegram Letter Number ST / 216 / X / 2012 which is a revision of Decree Number: Kep / 645 / X / 2012 dated 30 October 2012 which appointed Brig. Gen. (Pol) Jodie Rooseto as West Java Regional Police Chief. Brigadier General (Pol) Jodie Rooseto was eventually shifted to become the Principal for the Establishment of Officers (*Kasektupa*), at the National Police Police Education Institute because it was considered to be

less responsive and failed to prevent conflicts with bad smells. Meanwhile in the conflict that occurred in Sigi Regency, Central Sulawesi around 2012-2013 that was a series of various conflicts in the Central and South Sulawesi regions obtained a different handling model. Conflicts between residents of various districts also often occur, both between tribes (given the number of indigenous tribes in this region), between villages or hamlets or between community groups. In the field search, data on conflicts that occurred in Palu and Sigi were found. Disputes between residents in Sigi include the sub-districts of Marawola and Kinovaro, Sigi Regency, Central Sulawesi. While in Palu clashes between residents occurred in the District of West Palu. The peace agreement initiated by the Governor on August 22, 2012, has not been able to stop the conflict.

In the Law on Handling Social Conflict, namely Law Number 7 of 2012, LN of 2012 No. 116, TLN No. 5315, ps. 1 point 14. The Role of the Police in Handling Social Conflict in South Lampung, finally the Head of the Regional Police issued a notice by the Head of the National Police of the Republic of Indonesia Number NAK / 04 / I / 2013 regarding the prohibition of carrying sharp weapons and other dangerous objects. As for the information, among others:

Anyone found possessing, carrying or possibly making, storing and carrying sharp weapons or items suspected of being used to commit acts of violence such as hoods, arrows, bows, rifles and similar items that are not in their place and or can be used to commit acts of violence against others, the perpetrators will be arrested, detained, and will be processed according to applicable law.

During the investigation process in the police department, no detention postponement will be conducted.

The security guards will carry out checking or raids on places suspected of being hiding weapons and other

dangerous objects.

Whoever blocks this law enforcement activity and violates this notice will be dealt with firmly in accordance with applicable law.

Referring to the Emergency Law No. 12 of 1951 Article 2, can be threatened, a maximum sentence of 10 years. 6. For anyone with awareness or without coercion and pressure to hand over the items mentioned above, then there will be no sanctions.

This was later responded to by the Police with district leaders by issuing a Joint Circular Number 850 / 798.62 / Kesbangpol Kab. Sigi / 2012, basically strengthened the position of the head of police (*Kapolda*) in Police Station. Both of these letters were strengthened by the issuance of the Regent's Order Number 200 / 01.01 / *Kesbangpol*, which ordered to socialize and reproduce the Joint Circular issued by the Police and District leaders.

In a theoretical view basically Law as an instrument for social engineering, (law is a tool of social engineering in society) is the classic view of Roscoe Pond who views that law has a role to be able to regulate society. In this case the view of social engineering tools can be interpreted as:

Tools for regulating behavior in society.

New tools predict future behavior deviations and prevent them. In the case of handling a conflict in a community, conflict management policy becomes important, to be able to reduce the conflict and manage it to become an advanced condition of people's lives. Based on the description of the case above, it is known that the police have discretion in dealing with social conflicts within the community. As an effort to maintain security and public order in relation to social conflicts, in Article 15 paragraph 1 letter (b) of Law Number 2 of 2002 concerning the Indonesian National Police (Police Law) it is stated that one of the Polri's authorities is to help resolve citizens disputes society that disturbs public order. However, until

now there has been no regulation that makes clear what are the forms of discretion and restrictions on the discretion that the police have in their efforts to handle social conflicts. Considering the Social Conflict Management Law mandates the handling of social conflicts starting from the prevention, cessation and recovery of post-conflict which is not only the responsibility of the security forces but is the joint responsibility of the Government, Regional Government and the community. The absence of provisions governing in form and limitation of discretion by the Police force makes in handling the problems don't touch the underlying problems that occur in the community.

Furthermore, an analysis is needed on what forms of discretion and the extent to which the discretion is possessed by the police and how the position of internal regulations made by the police in handling social conflicts related to discretion held by the police.

4. CONCLUSION

Based on the description above, it can be concluded that Criminal Policy in the Field of Land Against Customary Land Conflict is the act of the perpetrators both individually and in groups can result in losses not harmonizing the local indigenous community, there is a criminal nature against the law so that there are perpetrators subject to criminal sanctions in the form of basic penalties namely; as regulated and threatened in Article 10 of the Criminal Code in the form of basic sentences namely the death penalty, imprisonment, confinement and fines and additional penalties for revocation of certain rights, the seizure of certain items and the announcement of a judge's decision. Criminal Policy Against Efforts to Overcome Customary Land Conflict Management Special criminal sanctions against general criminal acts are regulated in the provisions of the Criminal Law Act and the Basic Provisions of Agrarian Laws against criminal acts in the form of

embezzlement, fraud, document falsification, vandalism, arson, and / or physical clashes that cause property casualties and fatalities, occupying land without the right permit. There is a blurring of legal norms because in the regulation of criminal law sanctions do not include the threat of minimum punishment but only the threat of maximum punishment. The criminal aspect in every customary conflict is always trailing because usually in customary conflict there are parties who force the will to intersect with customary issues so that they can disturb public order until there is a criminal nature against the law.

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