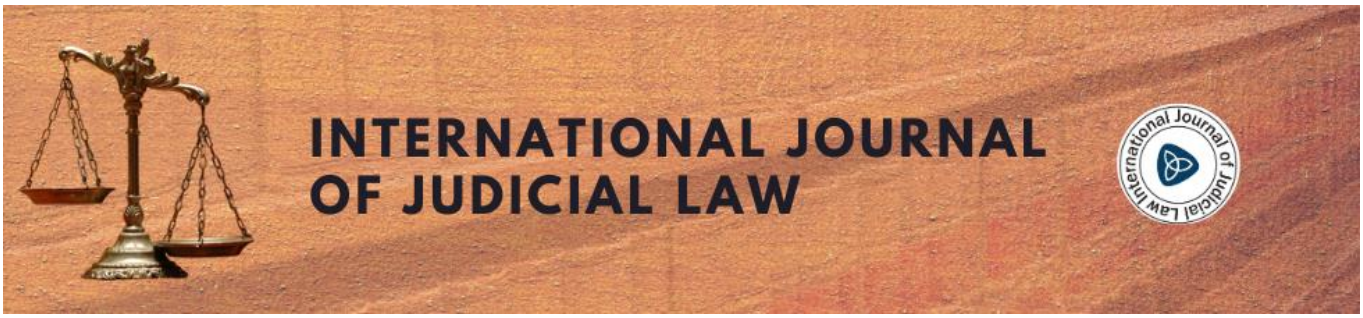




Resolution of Criminal Acts Resulting from Traffic Accidents under Dayak Customary Law in Kedamangan, Kotawaringin Lama, West Kotawaringin Regency

Selin Chintia Nababan ¹, Ahmad Syaafi ^{2*}

¹ Master of Laws Study Program, Faculty of Law, Lambung Mangkurat University, Banjarmasin, Indonesia

² Faculty of Law, Lambung Mangkurat University, Banjarmasin, Indonesia

* Corresponding Author: **Ahmad Syaafi**

Article Info

ISSN (online): 2583-6536

Volume: 04

Issue: 05

September - October 2025

Received: 15-07-2025

Accepted: 18-08-2025

Published: 20-09-2025

Page No: 56-61

Abstract

Traffic accidents are a serious problem that consistently result in loss of life, injury, and material loss. From a positive legal perspective in Indonesia, criminal acts that result in the loss of life due to negligence in traffic are strictly regulated in the Criminal Code (KUHP) and Law Number 22 of 2009 concerning Traffic and Road Transportation. These regulations aim to provide legal certainty and a deterrent effect for any perpetrator of traffic violations that result in fatal consequences. In social reality, the resolution of a crime is not solely carried out through formal legal instruments, but can also involve customary legal mechanisms adopted by the local community. In the case of a traffic accident that resulted in the loss of life that occurred in Kotawaringin Lama District, the cause was, among other things, driver negligence and unintentional drivers. When a traffic accident occurs, local residents do not immediately contact the police but instead go to the Damang or Mantir Adat in the area where the accident occurred. The results of the study show that the resolution of criminal acts of loss of life due to traffic accidents in Dayak Customary Law in Kedamangan Kotawaringin Lama emphasizes the principles of restorative, deliberation, and kinship.

DOI: <https://doi.org/10.54660/IJL.2025.4.5.56-61>

Keywords: Criminal Act, Traffic Accident, Customary Law, Dayak Tribe

1. Introduction

Traffic accidents are a serious problem that consistently result in loss of life, injury, and material loss. From a positive legal perspective in Indonesia, criminal acts resulting in the loss of life due to negligence in traffic are strictly regulated in the Criminal Code and Law Number 22 of 2009 concerning Traffic and Road Transportation. These regulations aim to provide legal certainty and a deterrent effect for any perpetrators of traffic violations that result in fatal consequences.

However, in addition to the validity of national law, Indonesia also recognizes the existence of customary law as a living legal system within society. This recognition is reflected in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that the state recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with societal developments and the principles of the Unitary State of the Republic of Indonesia. Thus, in social reality, the resolution of a criminal act is not solely carried out through formal legal instruments, but can also involve customary law mechanisms adopted by the local community.

One indigenous community that still strongly adheres to customary law traditions is the Dayak people in Kalimantan, including in the Kedamangan area of Kotawaringin Lama District, West Kotawaringin Regency, Central Kalimantan. From the Dayak perspective, customary law is understood not only as a social norm but also as a conflict resolution mechanism that emphasizes

the principles of balance, the restoration of good relations between individuals, and collective peace ^[1].

For the Dayak people, customary law serves not only as an instrument of social control but also as a conflict resolution mechanism that emphasizes the principles of balance, deliberation, and the restoration of good relations among community members. In the context of criminal acts that result in the loss of life due to traffic accidents, the Dayak indigenous people have their own unique approach to resolving these issues.

The mechanism for resolving crimes involving the loss of life under Dayak customary law is usually conducted through a customary judicial institution led by a Damang. The process emphasizes deliberation, mediation, and the imposition of customary sanctions in the form of fines (possession of property or payment of goods or customary money) to the victim's family ^[2].

For the people of Kotawaringin Lama District, resolving disputes through customary law is seen as more effective in restoring social harmony. However, from a national legal perspective, this raises questions about the place of customary law within the Indonesian criminal justice system. It also raises questions about whether customary law can nullify criminal liability under positive law or whether it can work alongside restorative justice, which is now emerging in modern criminal law.

This research is expected to provide a comprehensive picture of how Dayak customary law regulates and resolves these cases, how it interacts with positive law, and to what extent customary law can contribute to realizing justice in accordance with local values without ignoring the certainty of state law.

2. Research Methodology

The type of research used is empirical legal research by conducting interviews with the Damang Adat Kotawaringin Lama and the local community as primary data sources.

The location where the research was conducted was in Kotawaringin Lama District, West Kotawaringin, where the object of the research was in Kedamangan, Kotawaringin Lama.

3. Discussion

3.1. The Role of Damang, the Dayak Traditional Chief of Kotawaringin Lama in Resolving Criminal Acts

The Dayak people, as one of the largest customary law communities in Kalimantan, possess a unique social and legal system. Within their social structure, the Damang Kepala Adat (traditional head) represents a traditional leadership institution that has been passed down through generations. The word Damang itself means a leader or chief responsible for maintaining order and social balance in the Dayak community ^[3].

The Damang Traditional Head is a customary leader at the Kedamangan level who traditionally holds the authority to regulate the life of the Dayak community, including resolving disputes and customary crimes. The Damang's position is not

only a symbol of cultural leadership but also a customary official recognized by the state through legislation.

Old Kotawaringin, as part of the Kotawaringin Kingdom and now located in the Kotawaringin Lama District, West Kotawaringin Regency, has a strong history of settlement, social patterns, and traditional traditions. Traditional social structures established during the kingdom era facilitated the formation of customary institutions (including leadership figures such as the Damang) that function to organize social relations, regulate spatial control (rivers, fields), and resolve disputes between residents. Ritual heritage, the system of socio-ecological spatial division (continent/banua), and collective customary practices remain the primary references in the local community's way of life.

The role of the Damang, the Traditional Head of Kotawaringin Lama, West Kotawaringin Regency in resolving criminal acts or disputes can be described in several main functions, as follows:

1. As a Customary Judge

The Damang Traditional Head serves as a customary judge who presides over the customary court hearings in resolving customary cases. Criminal offenses resolved through customary court hearings include:

1. Crimes of assault and murder.
2. Domestic disputes, marriage, and divorce.
3. Land, property, and inheritance disputes.
4. Violations of morality or customary norms.

In carrying out their functions, the Damang is assisted by a customary mantir (traditional counselor) who acts as a customary investigator, customary witness, and courtroom assistant ^[4].

2. As a Mediator and Negotiator

Customary dispute resolution prioritizes the principle of deliberation to reach consensus. The Damang acts as a mediator, bringing peace between the disputing parties. This resolution model differs from modern criminal law, which emphasizes punishment (punitive justice). The Damang prioritizes restorative justice, namely the restoration of social harmony ^[5].

3. As a Guarantor of Social Justice

The role of the Damang is not merely to punish criminals, but also to balance social relations. The Damang's decisions are oriented more towards restoring communal balance. This aligns with the Dayak people's philosophy of life: *Belum Bahadat*, which means living according to tradition and maintaining harmony in communal life ^[6].

4. As Executor and Supervisor of Customary Sanctions

In addition to issuing verdicts, the Damang also serves as a supervisor of the implementation of customary sanctions. These sanctions can take the form of:

1. Customary fines, which must be paid in money, gold, or certain goods.
2. Customary ceremonies or purification rituals such as

¹ Koentjaraningrat. (2009). *Pengantar Antropologi*. Jakarta: Rineka Cipta. p. 311.

² Tjilik Riwut. (1993). *Kalimantan Membangun*. Jakarta: Endang. p. 189.

³ John Bamba. (2017). *Hukum Adat Dayak dan Restorative Justice*. Pontianak: Institut Dayakologi. p. 22.

⁴ Humaidy. (2018). *Kearifan Lokal dalam Penyelesaian Sengketa Adat Dayak Ngaju*, Jurnal Hukum Adat Indonesia. Vol. 12 No. 1. p. 77

⁵ A. A. C. M. Zoetmulder. (1995) *Adat Law in Indonesia*. Jakarta: Djambatan. p. 105.

⁶ A. M. Sigar. (2010). *Belum Bahadat: Falsafah Hidup Dayak Ngaju*. Palangka Raya: LIPI Press. p. 56.

basirah (self-cleansing) or manarah (forgiveness ritual).

3. Customary social work to redress the losses of the injured party.

The Damang (Customary Leader at the village level) is not merely a symbolic figure, but rather an institution internally legitimized by the community and increasingly formally recognized by local government officials. At the district/provincial level, recognition and guidelines for customary institutions (including appointment mechanisms, duties, and customary territories) are regulated through regional regulations/regental regulations and technical guidelines that outline the Damang's authority in customary development and dispute resolution. In West Kotawaringin Regency, for example, a regental regulation serves as a guideline for the recognition and management of customary law communities, emphasizing the role of customary institutions in local governance. This institutional recognition allows the Damang to act as an official mediator between the customary community and government officials.

Functionally, the Damang in Kotawaringin Lama plays a dual role:

- (1) as a judge/customary councilor who presides over customary court hearings for customary matters (customary land disputes, marriage, inheritance, violations of social norms), and
- (2) as a mediator/restorative actor who prioritizes restoring social relations through compensation, rituals, and peace agreements.

This practice is rooted in local cultural philosophy that prioritizes communal balance (*harmoni banua*) over individual punishment alone. In practice, the traditional leader (*mantir*) and the traditional community (*desa adat*) accompany the Damang, so that customary decisions are recorded in customary minutes, which serve as a shared reference.

The role of Damang, the Dayak Customary Chief of Kotawaringin Lama, West Kotawaringin Regency, in resolving criminal acts aligns with the principles of restorative justice, emphasizing victim recovery, perpetrator accountability, and social reconciliation over mere punishment. Through deliberation, customary fines, and peace rituals, Damang brings about vibrant justice and restores social balance, serving as a concrete example of restorative justice based on local wisdom.

The role of Damang, the Dayak Customary Chief of Kotawaringin Lama, West Kotawaringin Regency, in resolving criminal acts reflects progressive legal practice, prioritizing substantive justice, social benefit, and restoring social balance over mere formal punishment. Through deliberation, customary fines, and reconciliation, Damang implements living law that favors the people, in accordance with the principle of law for people, not people for the law. However, to be more powerful, the Damang's role needs to be continuously strengthened in terms of formal legitimacy within the national legal system.

3.2. Mechanism for Settling Criminal Acts of Losing Life Due to Traffic Accidents According to Dayak Customary Law in Old Kotawaringin

The phenomenon of criminal acts resulting in loss of life due to traffic accidents is a serious issue that concerns not only positive legal aspects but also social values, culture, and local wisdom. In Indonesia, traffic accidents frequently result in fatalities, giving rise to complex legal issues, particularly when it comes to determining perpetrator responsibility, restoring victims' rights, and maintaining social harmony within the community.

The Dayak indigenous community in the Kotawaringin Lama area, West Kotawaringin Regency, still upholds customary law as an instrument for resolving disputes, including in cases of traffic accidents that result in the loss of life. Dayak customary law emphasizes the principles of balance, restoration, and peace, so that dispute resolution is more directed at restoring social relations through customary mechanisms such as deliberation, mediation led by the Damang Traditional Head, and the imposition of customary sanctions in the form of customary fines (compensation penalties) known as the customary punishment "*panyanggaran*" or other forms of compensation.

Kotawaringin Lama, an area that still adheres to Dayak traditions and customary law, serves as a concrete example of how local wisdom can synergize with positive law in resolving criminal acts. The settlement mechanism according to Dayak customary law in this region not only serves to maintain social order but also reflects the application of justice that is more in line with the local community's sense of justice. Therefore, it is important to scientifically examine and document how the settlement mechanism for criminal acts involving loss of life due to traffic accidents is carried out according to Dayak customary law in Kotawaringin Lama, in order to contribute to the development of national law based on legal pluralism and the values of restorative justice.

Based on Article 1 number 11 of the Regional Regulation of West Kotawaringin Regency Number 41 of 2021 concerning Guidelines and Procedures for Recognizing Customary Law Communities in West Kotawaringin Regency, customary law is understood as a set of norms or rules, both written and unwritten, that are alive and applicable in regulating human behavior, sourced from the cultural values of the Indonesian nation, passed down from generation to generation, and always obeyed and respected for the sake of creating justice and social order, which in turn gives rise to legal consequences or sanctions. In the context of the community in Kotawaringin Lama District, the existence of customary law is recognized as a legal system that has lived, developed, and practiced in their social life since ancient times. The local community places customary law not only as a cultural heritage, but also as a normative instrument that functions in resolving cases that arise in the midst of community life in the Kedadangan area of Kotawaringin Lama.

Based on interviews ^[7] with sources in Kadamangan, Kotawaringin Lama District, acting as the local Damang, it was discovered that, from a Dayak customary law perspective, formal institutions such as the police, prosecutors, courts, or correctional institutions are not recognized. Customary law focuses more on the consequences of an event, particularly in cases of accidents that result in the loss of life. In this context, the primary focus is not on determining who is at fault, but rather on how the losses incurred can be redressed through customary mechanisms aimed at maintaining social balance within the community.

The resolution of the crime of loss of life due to a traffic accident, from the perspective of Dayak customary law in the Kadamangan area, Kotawaringin Lama District, West Kotawaringin Regency, is carried out through the customary legal mechanism of "tanggul." This mechanism is a customary procedure specifically used to handle cases resulting in loss of life, with the primary goal of restoring social balance and maintaining harmony in community life. The settlement process through Tanggul customary law is carried out in stages, by going through several important stages as follows ^[8]:

1. Manaikan Kedomung Custom

The Manaikan Kedomung Custom is the initial stage in the complaint process filed by the victim with the Kotawaringin Lama Customary Court. This custom is performed by the victim's family with the direct involvement of the Customary Court, witnessed by the Kotawaringin Lama District Mantir Council, as a form of legitimacy and initial validation of the complaint within the local customary legal system.

The implementation of the Manaikan Kedomung custom requires the use of several specific materials considered essential to initiate the customary court process. If these procedures are not followed according to the provisions, the complaint is considered invalid according to the Kotawaringin Lama Customary Law and cannot proceed to the next stage. The materials used in the Manaikan Kedomung custom include:

1. One (1) plate of sticky rice.
2. One (1) egg.
3. Cash of Rp 25,000 (twenty-five thousand rupiah).

These materials have symbolic meaning in Dayak customary law tradition, where the sticky rice and egg symbolize purity and life, while the cash signifies respect for the customary process and the complainant's involvement in resolving the case.

The Customary Council of Kotawaringin Lama District received a report from the local community regarding a criminal act involving the loss of life due to a traffic accident. The report was filed with the intention of resolving the case through Kotawaringin Lama customary law mechanisms, specifically the Menanggul Customary Law procedure.

After the victim's family performed the Manaikan Kedomung ritual, the complaint was officially received by the Customary Council. This acceptance of the complaint marks the beginning of the customary court process, where the Customary Council, along with the Mantir Council, has the authority to follow up on the case according to the applicable

Tanggul customary law stages, from examination and deliberation to the imposition of sanctions on the responsible parties.

2. Summoning Bahaum Bakuba

The Summoning Bahaum Bakuba is a customary procedure carried out to summon the parties involved in a case, both the perpetrator and the victim, to attend a customary hearing. This stage is carried out by the Mantir Adat (Customary Leader) of Kotawaringin Lama Village, who is responsible for extending invitations to the families of the victims and perpetrators involved in the case. This summons aims to ensure that both parties can attend the customary hearing held in Kadamangan, Kotawaringin Lama District, as part of the dispute resolution mechanism based on Dayak customary law.

The Summoning Bahaum Bakuba is a crucial stage in the conduct of customary court proceedings in Dayak communities, particularly in Kotawaringin Lama Village, Kotawaringin Lama District. This process involves formally summoning the parties involved in the case, both the victim and the perpetrator, to attend the customary hearing held in Kadamangan, Kotawaringin Lama District. This stage is carried out by the Village Customary Council, who has the authority and responsibility to convey invitations and ensure that all relevant parties can attend, so that the customary law process can take place legally and in accordance with local customary norms.

Sociologically, the summons of the Bahaum Bakuba is not merely a formality. This stage plays a crucial role in maintaining openness, transparency, and deliberation in the resolution of cases. The presence of the victim and perpetrator in the customary court provides an opportunity for both parties to provide information, be accountable for their actions, and hear the decision that will be rendered by the customary authority. Thus, this process plays a role in realizing restorative justice, where the primary focus is not simply punishment for the perpetrator, but restoration of social relationships and healing for the victim and the community.

The summons of Bahaum Bakuba is not merely an administrative procedure under Dayak customary law, but a concrete implementation of the principle of restorative justice. This stage emphasizes that dispute resolution in Dayak communities emphasizes not only punishment but also social recovery, reconciliation, and respect for the norms and values of local wisdom that have been passed down through generations.

3. Customary Council Meeting

The next stage after summoning the Bahaum Bakuba is the holding of the Customary Council Meeting, a customary forum for discussing and resolving community issues. This meeting is chaired by the Damang Adat (Customary Leader) of Kotawaringin Lama District, assisted by other customary stakeholders who act as customary judges. This structure ensures that decisions made reflect the collective wisdom and customary norms prevailing in the region.

The Customary Assembly Session is the core stage in the customary dispute resolution mechanism in Dayak communities, particularly in Kotawaringin Lama Village,

⁷ Interview with Mr. Karmadi as Damang Kotawaringin Lama on September 19, 2025.

⁸ Ibid.

Kotawaringin Lama District. This forum serves as a means to discuss, assess, and decide cases involving community members, both victims and perpetrators, based on customary norms that have been passed down through generations. The session is led by the Customary Council of Kotawaringin Lama District, assisted by the Customary Council as customary judges with collective decision-making authority. During the session, the Customary Council has the authority to determine whether the trial and case are open to the public or closed, thus ensuring the security and order of the proceedings and protecting the parties involved. This decision is crucial to ensuring the trial proceeds in a conducive manner, preventing disruption, and respecting the rights of both victims and perpetrators.

The trial was conducted through deliberation, based on the principle of kinship, a hallmark of Dayak customary law. This deliberation aimed to reach a mutual agreement, not merely impose sanctions on the perpetrators. The primary focus of the Traditional Assembly Session was to reconcile the disturbed situation, restore social harmony, and strengthen bonds among community members in the Kotawaringin Lama District.

4. Kedomangan Decision

The Kedomangan Decision is the final stage in the customary dispute resolution process in the Dayak community, particularly in cases involving loss of life due to traffic accidents in Kotawaringin Lama District. This decision is made by the Damang Adat after going through the customary court process, namely the Sidang Perapatan Adat (Customary Council Meeting), and must obtain the approval of both parties to the dispute: the perpetrator and the victim's family. In unintentional cases, where the perpetrator causes the death of the victim without intent or intention (known in the Dayak language as *luhap tada di tomah botu*), the Damang Adat (Customary Leader) determines the appropriate customary sanction. The sanction imposed in this context is *Tanggul Mati Sakoti Kutung*, which aims to restore social balance and re-establish relationships between the perpetrator, the victim, and the community.

This decision not only represents the perpetrator's accountability but also symbolizes social reconciliation, where both parties accept and agree to the results of the customary deliberation. The implementation of the decision is overseen by the Mantir Adat and witnessed by members of the Kotawaringin Lama community, ensuring transparency, legitimacy, and community acceptance of the decision.

The Kedomangan Decision is not merely the imposition of sanctions, but is a real implementation of Dayak customary law that is oriented towards restorative justice, where the main goals are peace, restoration of social relations, and strengthening community solidarity.

5. Delivering the Traditional Fruit

Delivering the Traditional Fruit is the execution stage of the traditional decisions that have been stipulated in the Kedomangan Decree. This stage emphasizes that the perpetrator is obliged to carry out the sanctions that have been determined for him, as a form of accountability for his actions and an effort to recover losses arising from the incident that befell the victim.

The customary fruit delivery ceremony was conducted in the presence of the Damang Adat (traditional leader) of Kotawaringin Lama District, assisted by the Mantir Adat

(customary leader), and witnessed by the victim's family. The presence of these parties ensured that the sanction implementation process was transparent, legally valid, and acceptable to all parties. Furthermore, the presence of the community or family as witnesses served to reinforce the social and normative values upheld by Dayak customary law. Delivering the Fruit of Tradition is not just a formality, but an important stage that emphasizes restorative justice in Dayak customary law. This stage upholds the principles of responsibility, reconciliation and restoration of social harmony, while strengthening the legitimacy of traditional decisions in the eyes of the community.

6. Tapung Tawar Tradition

The Tapung Tawar Tradition is a traditional ceremony performed to cleanse the area where a traffic accident that resulted in death occurred, while also ensuring that the community is free from fear or anxiety about passing through the area. This ceremony serves as a form of spiritual and social healing, affirming that the negative energy or negative impacts of the incident have been resolved according to customary law, thereby restoring balance to the community and the environment.

The Tapung Tawar custom ceremony takes place at the scene of the accident and is led by the Damang Adat (traditional leader) and the Mantir Adat (traditional leader). The symbolic use of traditional materials with special significance in Dayak tradition includes:

1. One Kambat, typically used as a symbol of connection between humans and ancestral spirits or guardians of tradition.
2. One Gagat Gonting, which serves as a medium to absorb and neutralize negative energy remaining from the incident.
3. Three Tatawar leaves, symbolizing cleansing and protection from potential dangers.
4. Three Andung leaves, symbolizing balance and healing for the environment and the surrounding community.
5. Rupus is made from rice mixed with turmeric, a symbol of fertility and life, while turmeric has the function of cleansing and neutralizing negative energy.

From a restorative justice perspective, the Tapung Tawar tradition can be viewed as an additional stage of social recovery after customary sanctions have been implemented (Delivering the Fruits of Custom). This ceremony helps communities overcome trauma, strengthen their sense of security, and restore social trust in affected communities. Furthermore, the symbolism and rituals performed collectively affirm community ties, strengthen solidarity, and emphasize the normative values of Dayak customary law.

The Tapung Tawar custom is not merely a symbolic ritual, but is an important instrument in the Dayak customary law mechanism to maintain social, spiritual, and moral balance in society, while preventing the recurrence of similar events in the future.

The community's choice to pursue customary law demonstrates that formal criminal law is often considered too complex, time-consuming, and unresponsive to local social conditions. The customary legal mechanisms of the Dayak Kotawaringin Lama, characterized by deliberation, consensus, and the principle of kinship, allow for a more humane, expeditious resolution that aligns with community values. This makes customary law an effective restorative

justice instrument in cases of loss of life due to traffic accidents in the Kotawaringin Lama area.

4. Conclusion

The settlement of criminal acts of loss of life due to traffic accidents in Dayak Customary Law in Kedamangan Kotawaringin Lama emphasizes the principles of restorative, deliberation and family.

The Damang, the Dayak Customary Chief of Kotawaringin Lama, acts as a mediator and facilitator in resolving criminal cases, ensuring the process adheres to customary law, restorative justice principles, and family deliberation. He guides perpetrators and victims toward reconciliation, compensation, and the restoration of social harmony in the community, thus achieving justice without emphasizing formal criminal sanctions.

The mechanism for resolving criminal acts of loss of life due to traffic accidents according to Dayak Customary Law in Kotawaringin Lama emphasizes deliberation, restoration of social relations, and kinship. The process is facilitated by the Damang (Customary Leader) through customary stages such as Manaikan Kedomung (the process of reconciliation and reconciliation), with the goal of achieving reconciliation, compensation, and restoring community harmony, without prioritizing formal criminal penalties.

5. References

1. Bamba J. Hukum adat Dayak dan restorative justice. Pontianak: Institut Dayakologi; 2017.
2. Humaidy. Kearifan lokal dalam penyelesaian sengketa adat Dayak Ngaju. J Hukum Adat Indones. 2018;12(1).
3. Koentjaraningrat. Pengantar antropologi. Jakarta: Rineka Cipta; 2009.
4. Riwut T. Kalimantan membangun. Jakarta: Endang; 1993.
5. Sigar AM. Belum bahadat: falsafah hidup Dayak Ngaju. Palangka Raya: LIPI Press; 2010.
6. Zoetmulder AACM. Adat law in Indonesia. Jakarta: Djambatan; 1995.