

The Meaning and Legitimacy of Caning Sanctions in the Customary Law of Ngen Ca'o Kutei Jang: A Sociology of Law Perspective

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Abstract: This article examines the meaning and legitimacy of caning sanctions within the customary law system of Ngen Ca'o Kutei Jang in Rejang Lebong Regency from a sociology of law perspective. While debates surrounding physical punishment often focus on its conformity with national criminal law and human rights standards, this study shifts the analytical lens toward its social meaning and internal legitimacy within the indigenous community. Employing a normative-empirical legal approach, this research analyzes customary texts, scholarly literature, and documented practices of sanction implementation. The findings indicate that caning sanctions are not merely punitive measures but function as symbolic instruments of moral restoration, social equilibrium, and communal identity reinforcement. Their legitimacy is constructed through collective recognition, cultural continuity, and institutional authority of adat leaders. However, tensions emerge when internal legitimacy intersects with external normative frameworks such as human rights discourse. This study contributes to socio-legal scholarship by demonstrating how legal pluralism operates in practice and how living law sustains its authority through social acceptance rather than formal codification.

Keywords: sociology of law; legal pluralism; customary sanction; living law; social legitimacy

Introduction

Customary law within the Indonesian legal system cannot be understood merely as a residual tradition; rather, it constitutes a form of living law that continues to function within the social structure of society. Soerjono Soekanto emphasizes that customary law reflects the personality and social values of a community, evolving dynamically in accordance with its societal development.¹ From the perspective of the sociology of law, the validity of a norm is not determined solely by formal state recognition, but also by social acceptance and its effectiveness in regulating social life.

¹ Soekanto, Soerjono, *Hukum Adat Indonesia* (PT RajaGrafindo Persada, 2016).

In the context of the Rejang community in Rejang Lebong Regency, this system of customary norms is formulated in a codified guideline known as Kelpeak Ukum Adat Ngen Ca'o Kutei Jang. Contemporary studies demonstrate that Kelpeak does not function merely as a normative guideline, but also as an instrument integrating customary values and religious principles that shape the social control system of the Rejang community.² Thus, customary law in this context does not exist as a static relic of the past; rather, it operates as an active normative system embedded in everyday social practices.

One of the sanctions recognized within this system is caning. In national legal discourse, physical punishment is frequently positioned within the framework of constitutionalism and human rights protection. Research on the implementation of caning from a human rights perspective reveals tensions between local practices and universal human rights principles.³ However, a purely normative approach risks overlooking the social dimension of the operation of customary law itself.

Several empirical studies on the effectiveness of customary sanctions indicate that certain physical punishments are perceived by communities as restorative mechanisms intended to preserve morality and social harmony.⁴ On the other hand, research concerning the existence of caning in other customary societies shows that such practices may raise legal and ethical concerns when not accompanied by adequate mechanisms for rights protection.⁵ This condition illustrates the tension between internal social legitimacy and external normative legitimacy.

The phenomenon of caning sanctions imposed by customary institutions in Rejang Lebong, as documented in media reports, demonstrates that such practices are not merely textual norms but constitute tangible social realities.

⁶ This strengthens the argument that caning sanctions should be examined not only from the standpoint of formal legality, but also through the construction of their social meaning and legitimacy.

Within the framework of legal pluralism acknowledged through the enactment of the 2023 Criminal Code (KUHP), living law is recognized insofar as it does not contradict fundamental state principles and human rights standards.⁷ This recognition places customary law in a unique position: on the one hand, it is formally acknowledged; on the other hand, it remains subject to normative limitations imposed by the state. Therefore, analyzing the meaning and legitimacy of caning sanctions becomes essential to understanding how customary law sustains its authority within the social structure of the Rejang community.

² Dahwal, Sirman, Fernando, Zico Junius, "The Intersection of Customary Law and Islam: A Case Study of the Kelpeak Ukum Adat Ngen Ca'o Kutei Jang in the Rejang Tribe, Bengkulu Province, Indonesia," *Cogent Social Sciences* 10, no. 1 (2024): 2341684, <https://doi.org/10.1080/23311886.2024.2341684>.

³ Prasetyo, Dedy Ardian, Embong, Rahimah, "The Impact of Human Rights Principles on the Criminal Act of Caning: Asymmetric Decentralization Insight," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (2025): 60–90.

⁴ Syafitri, Nova Trisna Dwi, "Sanksi Adat Sebagai Alternatif Hukum Bagi Pelaku Perzinaan Menurut Hukum Islam," *Journal Customary Law* 1, no. 2 (2024): 10–10.

⁵ Luhulima, M., Tutuarima, F., Abas, A., "Eksistensi Hukum Cambuk (Mihita La Ua Uatto) dalam Masyarakat Adat Iha-Ulupia Dikaji dalam Perspektif HAM," *Ideas: Jurnal Pendidikan, Sosial, dan Budaya* 7, no. 3 (2021): 151–58.

⁶ BMA Rejang Lebong Jatuhkan Sanksi Cambuk kepada Tiga Penyebar Isu SARA Website Title: Antara Bengkulu, 12 Mei 2025, <https://bengkulu.antaranews.com/berita/412625/bma-rejang-lebong-jatuhkan-sanksi-cambuk-kepada-tiga-penyebar-isu-sara>.

⁷ Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, KUHP 2023.

Research Method

This study employs a normative-empirical legal approach within the framework of the sociology of law. The normative approach is utilized to analyze the text of Kelpeak Ukum Adat Ngen Ca'o Kutei Jang as a source of customary law, as well as relevant statutory regulations such as Law Number 1 of 2023 concerning the Indonesian Criminal Code and Law Number 12 of 2022 concerning Sexual Violence Crimes. This normative analysis aims to understand the position of customary law within the national legal system and the normative boundaries that regulate its applicability.

The empirical approach is used to examine the social practice of implementing caning sanctions within the Rejang Lebong community, as documented in previous studies and media reports. This approach is grounded in the view that law should not be understood solely as written norms, but as a living social practice embedded within the structure of society.⁸ Accordingly, this research positions customary law as a social phenomenon that derives its legitimacy from collective acceptance.

This research is descriptive-analytical in nature. Descriptively, it outlines the normative structure contained in Kelpeak Ukum Adat Ngen Ca'o Kutei Jang and describes the forms of caning sanctions as implemented in practice. Analytically, it evaluates the social meaning and legitimacy of such sanctions by relating them to the theory of living law and to scholarly discussions concerning the effectiveness and continued existence of customary sanctions in society.⁹

The data sources in this research consist of secondary data, including academic literature on customary law and caning sanctions, scholarly articles related to Kelpeak, and national legal documents. Secondary data also include media reports documenting the implementation of caning sanctions by customary institutions in Rejang Lebong Regency as evidence of actual social practice.¹⁰

Data analysis is conducted through content analysis by identifying normative patterns, symbolic meanings, and constructions of legitimacy within both the customary texts and their social implementation. The analytical process involves stages of data reduction, classification of findings, and systematic conclusion drawing. The analysis focuses on two primary aspects: the social meaning of caning sanctions within the customary community, and the mechanisms through which their social legitimacy is constructed within the framework of legal pluralism.

This approach is selected because it enables the integration of normative analysis of the structure of customary law with an empirical understanding of how such norms are internalized in social life. Therefore, this study does not merely assess the formal conformity of caning sanctions with positive law, but rather explains how such norms acquire and sustain legitimacy within the social structure of the customary community.

⁸ Soekanto, Soerjono, *Hukum Adat Indonesia*.

⁹ Dahwal, Sirman, Fernando, Zico Junius, "The Intersection of Customary Law and Islam: A Case Study of the Kelpeak Ukum Adat Ngen Ca'o Kutei Jang in the Rejang Tribe, Bengkulu Province, Indonesia."

¹⁰ *BMA Rejang Lebong Jatuhkan Sanksi Cambuk kepada Tiga Penyebar Isu SARA Website Title: Antara Bengkulu*.

Discussion and Analysis

1. Customary Law as Living Law within the Rejang Community

From the perspective of the sociology of law, law is not understood merely as a product of formal legislation, but as a living social norm functioning within society. The concept of living law, as articulated by Soerjono Soekanto, emphasizes that customary law reflects the values, personality, and social structure of a community that develops dynamically alongside social change.¹¹ Accordingly, the validity of customary law does not depend on state codification, but on the acceptance and internalization of norms by members of the community.

Kelpeak Ukum Adat Ngen Ca'o Kutei Jang exemplifies this characteristic. This system functions not only as a normative guideline but also as an actual mechanism for resolving social conflicts. Dahwal and Fernando demonstrate that Kelpeak evolved through the integration of customary values and religious principles, thereby establishing strong cultural legitimacy within the Rejang community.¹² This legitimacy is collective in nature and transmitted through the structure of customary authority.

In this context, customary law operates as a normative system possessing social coercive power. Compliance with customary norms does not arise solely from the threat of sanctions, but from collective awareness that such norms represent shared values. Therefore, the analysis of caning sanctions must be situated within the broader social function of customary law as a guardian of moral balance and communal harmony.

This socio-legal function of customary institutions is also reflected in empirical studies showing that traditional institutions in Bengkulu do not merely determine right or wrong in disputes, but emphasize reconciliation, social harmony, and restoration of relationships within the community. Customary dispute resolution therefore operates as a non-litigation mechanism that prioritizes collective peace rather than adversarial justice¹³.

2. The Social and Symbolic Meaning of Caning Sanctions

Caning sanctions within the customary law of Ngen Ca'o Kutei Jang cannot be understood reductively as mere physical punishment. Within the framework of the sociology of law, sanctions function as normative symbols that reaffirm the moral boundaries of the community.

Research on the effectiveness of customary sanctions indicates that traditional forms of punishment are often perceived as restorative mechanisms aimed at reestablishing social equilibrium rather than merely retaliating against the offender.¹⁴ In this context, caning functions

¹¹ Soekanto, Soerjono, *Hukum Adat Indonesia*.

¹² Dahwal, Sirman, Fernando, Zico Junius, "The Intersection of Customary Law and Islam: A Case Study of the Kelpeak Ukum Adat Ngen Ca'o Kutei Jang in the Rejang Tribe, Bengkulu Province, Indonesia."

¹³ Hasanah, Hikmah Dila et al., "Mecoak Tumbang: Antara Sanksi Adat dan Pencegahan Perkawinan Sedarah dalam Hukum Adat Rejang," *Scientia Iustitiae* 1 (2023).

¹³ Jayanuarto, Ranga, Sinung Mufti Hangabei, and Mikho Ardinata, "Pembadanan Prinsip dan Asas Hukum pada Lembaga Adat sebagai Lembaga Penyelesaian Sengketa Non Litigasi," *University of Bengkulu Law Journal* 6, no. 2 (2021).

¹³ Dahwal, Sirman, Fernando, Zico Junius, "The Intersection of Customary Law and Islam: A Case Study of the Kelpeak Ukum Adat Ngen Ca'o Kutei Jang in the Rejang Tribe, Bengkulu Province, Indonesia."

¹⁴ Syafitri, Nova Trisna Dwi, "Sanksi Adat Sebagai Alternatif Hukum Bagi Pelaku Perzinaan Menurut Hukum Islam."

as a symbolic mechanism marking the offender's "moral restoration" before the community. The public nature of its implementation reinforces its normative message and strengthens its social significance. The social meaning of caning sanctions may be understood through three dimensions:

1. The moral dimension, as the affirmation of collective norms against violations of customary values.
2. The restorative dimension, as an effort to restore social balance and communal honor.
3. The pedagogical dimension, as a deterrent effect and a form of social learning for other members of the community.

Thus, caning sanctions carry a broader meaning than mere physical action. They constitute a symbol of the legitimacy of customary norms collectively recognized within the community.

Empirical studies on other Rejang customary sanctions further support this interpretation, demonstrating that traditional punishments are often accompanied by symbolic rituals, communal participation, and restorative objectives aimed at repairing social relationships and reaffirming collective values rather than merely imposing physical penalties¹³.

3. The Construction of Social Legitimacy and the Authority of Customary Institutions

In the sociology of law, legitimacy is formed through social recognition of the authority empowered to enforce norms. Within the Rejang community, customary institutions such as the Badan Musyawarah Adat serve as bodies endowed with moral authority to impose sanctions.

Dahwal and Fernando emphasize that the Rejang customary structure incorporates deliberative mechanisms in decision-making processes, which reinforce its internal legitimacy.² Customary decisions are regarded as valid because they are produced through consensus and grounded in norms recognized across generations.

However, such legitimacy is internal and communal in nature. It derives from collective agreement and tradition rather than from formal state authorization. Within the framework of legal pluralism, this condition illustrates the existence of two distinct sources of legitimacy: the social legitimacy of customary law and the normative legitimacy of state law.

The documented implementation of caning sanctions in media reports demonstrates that customary institutions continue to exercise active authority within the Rejang community.¹⁵ This fact indicates that the social legitimacy of customary law remains strong and acknowledged within the local social structure.

¹⁵ Prasetyo, DeWibawa, Jovansyah Mulya Cipta et al., "Restorative Justice in the KUHP and Protection of Sexual Violence Victims," *Al Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 7, no. 1 (2025).

¹⁵ Prasetyo, Dedy Ardian, Embong, Rahimah, "The Impact of Human Rights Principles on the Criminal Act of Caning: Asymmetric Decentralization Insight."

4. Tension Between Social Legitimacy and Human Rights Discourse

Despite possessing strong internal legitimacy, caning sanctions remain subject to debate within the framework of human rights. Studies examining the impact of human rights principles on the practice of caning reveal potential conflicts between local values and universal human rights standards.

Research by Luhulima and colleagues on the existence of caning in other customary communities suggests that such practices may generate legal and ethical concerns when not accompanied by adequate rights protection mechanisms.¹⁶ This demonstrates that social legitimacy does not necessarily coincide with normative legitimacy under national or international legal frameworks.

The recognition of living law through the 2023 Criminal Code provides space for the existence of customary norms, yet simultaneously subjects them to constitutional and human rights limitations.¹⁷ Consequently, a dialectical relationship emerges between social legitimacy and the normative legitimacy of the state.

This tension does not automatically eliminate the social legitimacy of caning sanctions; rather, it highlights the need for constructive dialogue between customary law and national law. From a socio-legal perspective, this condition reflects the dynamic character of legal pluralism, which is not always harmonious but continuously negotiated within social and political arenas.

This tension also reflects broader debates in Indonesian criminal law reform, particularly regarding the incorporation of restorative justice principles into the new Criminal Code. Scholars have highlighted that while restorative approaches aim to repair social harmony, they may create normative conflicts when applied to sensitive offenses such as sexual violence, especially where victim protection laws explicitly prohibit non-judicial settlements¹⁵.

5. Legal Pluralism and the Recognition of Living Law

The concept of legal pluralism situates customary law and state law as two normative systems capable of coexisting within a single social space. In Indonesia, recognition of living law has been formally reinforced through the 2023 Criminal Code reform, which acknowledges the validity of customary norms insofar as they do not contradict constitutional principles and human rights standards.¹⁸

This recognition indicates that the state no longer monopolizes the source of legal legitimacy absolutely. Nevertheless, such recognition remains conditional. Customary law continues to operate within the normative supervision of the state. It is within this framework that a dialectical relationship arises between the social legitimacy of customary law and the normative legitimacy of state law.

In the context of Kelpeak Ukum Adat Ngen Ca'o Kutei Jang, legal pluralism becomes evident in the practice of resolving disputes through customary institutions even when national

¹⁶ Luhulima, M., Tutuarima, F., Abas, A., "Eksistensi Hukum Cambuk (Mihita La Ua Uatto) dalam Masyarakat Adat Iha-Ulupia Dikaji dalam Perspektif HAM."

¹⁷ Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

¹⁸ Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

legal mechanisms are available. This condition demonstrates that community members select mechanisms perceived as socially effective and aligned with their collective values.¹⁹ Such selection is not merely pragmatic preference but reflects the degree of social trust placed in customary institutions.

Thus, legal pluralism in this case represents not merely normative coexistence, but a process of social negotiation between two systems grounded in different sources of legitimacy.

6. Caning as a Mechanism of Social Control

Within the sociology of law, sanctions function as instruments of social control that maintain order and social integration. Soekanto underscores that customary law serves as a conflict resolution mechanism prioritizing the restoration of social relationships rather than mere punishment.²⁰

Caning sanctions in Rejang customary law may therefore be understood as part of this social control mechanism. Their operation extends beyond physical effects to encompass powerful social symbolism. Public implementation reinforces the moral message that customary norms possess collective coercive authority.

Studies on the effectiveness of customary sanctions indicate that traditional punishments are often perceived as more effective within homogeneous communities due to their strong social dimension.²¹ This contrasts with state criminal law, which is impersonal and procedural. In customary communities, close social relations intensify the symbolic impact of sanctions.

However, social effectiveness does not eliminate normative concerns. Research examining caning from a human rights perspective demonstrates that such practices may generate legal issues if not accompanied by safeguards protecting individual rights.²² Therefore, socio-legal analysis must go beyond assessing effectiveness and also examine the dynamic interplay between social control and rights protection.

7. The Dialectics of Legitimacy: Social, Cultural, and Normative Dimensions

The legitimacy of caning sanctions within Rejang customary law is constructed through three primary layers:

1. Cultural legitimacy, as the norm is inherited as part of communal identity.
2. Institutional legitimacy, as it is imposed by customary institutions recognized by the community.
3. Social legitimacy, as it is accepted and internalized as a mechanism of local justice.

However, within the framework of the modern rule of law, legitimacy is also measured by conformity with constitutional principles and human rights standards. Research on the impact of

¹⁹ Dahwal, Sirman, Fernando, Zico Junius, "The Intersection of Customary Law and Islam: A Case Study of the Kelpak Ukum Adat Ngen Ca'o Kutei Jang in the Rejang Tribe, Bengkulu Province, Indonesia."

²⁰ Soekanto, Soerjono, *Hukum Adat Indonesia*.

²¹ Syafitri, Nova Trisna Dwi, "Sanksi Adat Sebagai Alternatif Hukum Bagi Pelaku Perzinaan Menurut Hukum Islam."

²² Luhulima, M., Tutuarima, F., Abas, A., "Eksistensi Hukum Cambuk (Mihita La Ua Uatto) dalam Masyarakat Adat Iha-Ulupia Dikaji dalam Perspektif HAM."

human rights principles on caning practices reveals normative pressure against practices perceived as potentially violating individual rights.²³

This dialectic illustrates that legitimacy is not a singular concept; rather, it is layered and contextual. In customary communities, social legitimacy may be more dominant than formal legitimacy. Conversely, within the national legal system, formal legitimacy becomes the primary parameter.

Accordingly, caning sanctions within Ngen Ca'o Kutei Jang customary law exist within a space of negotiation between these two paradigms of legitimacy. Their sustainability depends largely on the capacity of the customary system to adapt without losing its normative identity.

Conclusion

This study demonstrates that caning sanctions within the customary law of Ngen Ca'o Kutei Jang cannot be reduced to mere physical punishment; rather, they must be understood as a social construct endowed with symbolic meaning and communal legitimacy. From the perspective of the sociology of law, the validity of such sanctions is sustained by the collective recognition of the Rejang community, the authority of customary institutions, and the internalization of moral values transmitted across generations. Caning functions as a mechanism for restoring social equilibrium, reaffirming collective norms, and serving as a pedagogical instrument that reinforces communal identity.

The legitimacy of caning sanctions is constructed through a customary social structure that emphasizes deliberation and the moral authority of adat leaders. Accordingly, this legitimacy is socio-cultural in nature and does not solely depend on formal state recognition. However, within the framework of Indonesian legal pluralism, this social legitimacy encounters the normative legitimacy of the state, which is grounded in constitutional principles and human rights standards. The tension between these two sources of legitimacy reflects the dynamic relationship between living law and positive law within the national legal system.

Through a normative-empirical approach, this research affirms that the existence of caning sanctions within the Rejang community constitutes part of a living customary legal practice with strong social binding force. Nevertheless, the sustainability of such practices requires constructive dialogue between customary institutions and the national legal framework to ensure that local values are preserved without disregarding fundamental human rights protections. In this regard, the study contributes to the development of socio-legal scholarship on legal pluralism and the legitimacy of norms within indigenous communities in Indonesia.

²³ Prasetyo, Dedy Ardian, Embong, Rahimah, "The Impact of Human Rights Principles on the Criminal Act of Caning: Asymmetric Decentralization Insight."

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