

# Ancestral Tradition, Social Control, and Sanctions in South Banten: '1001 Rules of the Wiwitan Polity'(Part 2)

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## Ancestral Tradition, Social Control, and Sanctions in South Banten: '1001 Rules of the *Wiwitan Polity*'<sup>1</sup> (Part 2)

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### Abstract

Today, many ethnic groups in Indonesia are bound to traditional kinship and/or territorial systems (adats), which structure social groups and constitute operational traditional legal systems. Since pre-colonial Malayo-Polynesian legal traditions (adats) in Indonesia seem to have certain elements in common, we hope to demonstrate the continuity of such legal tradition by describing the working mechanism of such traditional social control structure among Baduy people (we prefer Baduy community) in South-Banten. Baduy refers to a Sundanese adat community with significant governance and jurisdiction rights over their ancestral domain. Until today, they maintain a megalithic sanctuary and an ancient legal tradition. Presenting the main mechanism of social control among the Baduy, we hope to extract and demonstrate the working mechanisms of a Malayu-Sumbawan (Sundanese) pre-colonial order of social control that is practiced without experiencing much external influence until today. Baduy social control is constructed on the principle that harmful behavior, whether of a religious, civil or a criminal nature in Western terms, has caused an imbalance to the cosmic and social order. Thus social control essentially aims at restoring peace and the offender/victim back to their place in social order. Thus, with regard to the exercise out of social control, we consider the Baduy as to provide us with a proto type of communal social life in a pre-colonial polity which may enable us to better understand the cultural mechanisms of contemporary adats in (one of) Indonesian communities.

### Keywords

Baduy, Traditional Social Control, Indonesia.

## 南バンテンにおける先祖の伝統，社会統制，制裁

### —ウイウイタン政体の1001のルール(2)—

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## 要旨

インドネシアのエスニック・グループの多くは今日でも伝統的な血縁関係および/または地域の慣習法 (adats) と深く結びついている。慣習法 (adats) とは社会集団を形成し、運用可能な伝統的法体制を構成しているものである。インドネシアにおける植民地時代以前のマレー・ポリネシア人の法的伝統には共通の要素が存在するように思われる。南バンテンのパドゥイ人 (パドゥイ・コミュニティ) の伝統的な社会統制組織の作用メカニズムを説明することで、そのような法的伝統が現在まで受け継がれていることを示したい。パドゥイとは、先祖の領土に対し大きな支配力と司法権を持つスダネース・アグット・コミュニティのことである。パドゥイは今日まで、巨石の聖域と古代からの法的伝統を維持してきた。パドゥイ人の社会統制の主要メカニズムについて説明しながら、今日まで外部の影響をあまり受けることなく行われてきたマラユ・スマバワン (スダネース) 人の植民地時代以前の作用メカニズムを明らかにしたいと思う。パドゥイ人の社会統制は、有害な行為、つまりヨーロッパの用語で宗教的、民事的、刑事的犯罪とされる行為が宇宙的秩序と社会的秩序にアンバランスを生じさせるという原則に基づいて構築されている。社会統制は本質的に平和を回復し、犯罪者/被害者が社会秩序のそれぞれの場所に戻ることを目的としている。したがって、社会統制の実践に関し、パドゥイ人は植民地時代以前の政治形態における集団内社会生活の原型を示しており、コミュニティにおける現代のアグッツの文化的メカニズムについてさらなる理解を可能にするものであると思われる。

## キーワード

パドゥイ, 伝統的な社会統制, インドネシア

## PART II

The present paper gives a comprehensive analysis of the traditional delict code of the "megalithic" Indonesian Baduy<sup>2</sup>. Since 200 years the group has attracted considerable scientific interest. One reason, why they have attracted attention, is the fact that they have deliberately rejected cultural change or development as far as possible since at least 500 years. We address their social control structures and mechanisms. The Baduy have significant governance rights and own jurisdiction within their ancestral domain.

In the first part of our paper, we introduced the Baduy as a possible proto-type of the legal tradition prevalent among speakers of Malayo-Sumbawan languages. We provided the general

historical and ethnographic background of the Baduys' social position within Indonesian society. In the present second part we give a detailed description and analysis of the Baduy delict code. The conclusion shall offer some tentative basic mechanisms of conflict management of speakers of the Malayo-Polynesian and/or Malayo-Sumbawan languages – to be tested by comparative research in the future. In sum, Fathurokhman/Landmann's analysis of the social order and the traditional delict code among the Baduy hopes to illuminate basic patterns of coercive mechanisms and social control amongst speakers of Malayo-Sumbawan languages. Those patterns have been held since pre-colonial times yet changed and adjusted to fit social change.

## I. Introduction

### "Megalithic" Restorative Justice Expressed In Mediation, Conciliation and Ostracism

The Baduy may be classified as communal (*gayub*) and high context community.

Oversimplified, communal societies may be classified as "shame based" high context societies, in which the importance of face is very high, compared to individualistic, "guilt based" low context societies (Ruth-Heffelbower 2000: 3-4; Horwitz 1984). In such a communal body, the primary driving force behind many cultural practices is "the need to avoid losing face or causing someone else to lose face, either of which causes shame" (Ruth-Heffelbower 2000: 3; Interviews 2011). In such a community, "[t] here is little scope [...] for physical sanction which is replaced to a large extent by an emphasis upon internal and external harmony, the reverse image of which is shame (*malu*)" (Hooker 1978: 55) – favouring social over physical sanctions in making things right (Interviews 2011). Hence methods of indirect conflict resolution are applied that base on principles of restorative justice. "Such a perspective (...) derives from long-held indigenous customs in which kin, members of an immediate family, community, or nation seek to meet the needs of all involved in a harm situation. They know that, if a wrong is not righted in ways that take into account the needs of those who have been affected, the community will eat away at itself" (Sather 2004, in Sullivan and Tiftt 2006: 1). "The solution sought is restoration of the individual relationship, and by extension the peace of the community. A high context society does not see the possibility of peace in the community when individuals are not at peace" (Ruth-Heffelbower 2000: 3). This argument

is also made by Hooker (1978: 55): "A dispute is not settled until both parties become so sensitive to each other's feelings, circumstances, and standpoints on the matter that they agree upon a mutual adjustment which meets the special particularity of the situation (...)."

Baduy persons are less conceptualized as individual actors, but as part of a larger living body, a social group, a family or a clan, on whose behalf all actions are done. In a communal high context society, actions of an individual have an impact on the entire community. Thus, the predominant style of conflict resolution pursues the restoration of interpersonal relationships. As a logical consequence indirect methods of conflict resolution apply which require more people to be involved in the process of whom some might act as mediating third party. The overall setting of conflict resolution is negotiation – talking things out. We find this idea of talking things out in the concept of *musyawarah* (deliberation) and *mufakat* (consensus).

Community members assemble to talk things out so that relationships that have been disturbed by rule violation might be restored. Feelings of guilt and shame shall be cured during negotiation and/or mediation processes to avoid shame and retaliation. This means, someone acts or intervenes as third party, "representing the parties to each other, and the moral force of the community to both" (Ruth-Heffelbower 2000: 3) pursuing conciliation and re-establishment as well as restoration of social relations within the community. Landmann's data suggest that communicating information about motives and intentions of the conflict parties and negotiation or mediation is designed to avoid the outbreak of revenge and circles of retaliation that may endure centuries

by facilitating compensation, conciliation and restoration of social relations.

Pre-colonial evidence up to present cases suggests mediation to be the crucial mechanism of conflict resolution in the Philippines and Indonesia. This hypotheses needs to be tested and elaborated by future comparative research. For now, Landmann interprets mediation and conciliation (achievement of compromise) as prevalent mechanism of Malayo-Polynesian dispute resolution. In addition, Malayo-Polynesian conflict resolution seems to respond to rule violation as early as possible applying a 1.) maximum amount of voluntary cooperation, 2.) minimum amount of coercion, and, 3.) minimum amount of physical violence. Mediation, conciliation and accompanying compensation pursue the prevention of retaliation at the most basic level as early as possible. Central to the process are conciliatory and therapeutic styles of social control. (Black 1998) In this light, usually a process of mediation is gone through with the purpose of arriving at some compromise solution with regard to rule violations in order to restore public peace and to prevent retaliation and revenge that could lead to ever repeating circles of feuding and violence between clans or groups.

If a rule violation is severe, and neither internal nor public peace can be restored, the most serious mode of sanction among the Baduy, the Balinese and the Dayak is ostracism. Ostracism results in the refusal of communal support and legal protection by the group of origin (Baier 1977: 455). Ostracism is a sanction that is more severe than physical sanctions in the context of tribal and high-context social groups. Ostracism implies for the convicted to life without a group being responsible for them during life and after

death. In pre-colonial Indonesia, a responsible group was certainly crucial for a person's survival. Second, in the particular context of death, complex rituals require the collective workforce of the group. In the local perception, those rituals place the deceased in their proper place within the ancestral world. Those deceased, which are cremated without performance of obligatory rites, are perceived to continue living as malevolent ghosts on earth. In consequence, ostracism is a form of severe non-violent and covert retaliation as it condemns the rule violator to exist in non-empiric pain forever and without pardon.

In the Philippines, Kreuzer<sup>3</sup> found no evidence of ostracism practices. Thus, the avoidance practice of ostracism seems most likely to be a traditional sanction among speakers of Malayo-Sumbawan languages (probably among speakers of Indo Melanesian, but we have not yet comparable data for the whole Borneo island and Sulawesi). With reference to headhunting, retaliation, and feuding, the Bornean group might share social control practices with settlers in the Philippines speaking Malayo-Polynesian languages, which appear to differ from the practices of the groups speaking Malayo-Sumbawan languages. The latter appear to share less violent mechanism and show more avoidance practices and conciliatory/therapeutic styles of social control. In consequence, Landmann assumes that mediation and conciliation figure as central elements in "Malayo-Polynesian conflict resolution", whereas ostracism might be a specific "Malayo-Sumbawan sanction". It is still applied in Banten, Bali and Central Kalimantan, but further research is necessary to compare and map the extension of ostracism in the linguistic (and probably cultural area) of speakers of the Malayo-Sumbawan (Indo-

Melanesian) languages.

## II. Megalithic Baduy's Modern Delict Code

According to Baduy self-definition, they are a communal (*guyub*) society having a spiritual culture, because they refer to an apical ancestor, who set out the tradition and specific ancestral practice. *Pikukuh karuhun* (ancestral provisions) perpetuate the given cosmic, political, ecological and social order. Group members respect the genealogical right of the leadership ranks—because they are said to have been invented by their ancestors. In social structure, the function of traditional authority is to regulate social life, enforce *pikukuh karuhun* (ancestral provisions) and continue the ancestral mandate. Ancient rules and invented rules outlined by traditional authority are guided and legitimated by ancestral insight, thus all rules enforced by traditional authority are classified as ancestral provisions. New rules are invented during regular and ad hoc leadership assemblies and legitimated through ancestral consent attained in rituals. The leadership is flexible in decision-making, and rather really creative in providing solutions to social change using the *pikukuh karuhun* as guideline to invent new rules based on previous practices. A legal decision is negotiated in an assembly, because each of the leaders is an expert in specific fields of Baduy culture. A systematic totality of the Baduy's do's and don'ts is not known by each individual, but it is deposited in the 'chosen ones' within the community as collective and arcane knowledge. Thus, in any case, they need to gather first and negotiate decisions and new rules and only then consent from the ancestors can be attained. Maybe that is why

some principles in oral adat traditions remain conservative or resilient, they are connected with the tradition given to the community by their ancestors, they involve elements of the transcendent, and they are negotiated in assemblies using the body of rules and provisions as guideline. Thus, rules are not immutable, but rather conservative and resilient, because *pikukuh karuhun* is subject to continuity and change. Ancestral provisions allow for wide latitude in interpretation and this permits in turn a variety of accommodations in conflict resolution (cf. Hooker 1978).

Deeply embedded in the culture and religion of the *wiwitan* polity, *pikukuh karuhun* as cultural framework is causal and motivational. Whoever violates *pikukuh karuhun*, violates ancestral insights and cosmic and social order. Logically, the attitude of the community towards *pikukuh karuhun* and its enforcers tends to be obedience and rule compliance, the latter forming the primary base of continuity of *pikukuh karuhun* and the *wiwitan* polity. Thus rule compliance means obeying traditional authority, the body of rules and rule enforcement legitimated by *pikukuh karuhun*. Intentional rule violation is considered a severe breach of ancestral provisions. Intentional rule violation conveys the full risk and responsibility on the violator and his family, who are jointly liable for restoring peace in community. Even in case of unintentional rule violation, the soul is sanctioned. Secret rule violation which is unknown to the community, is no exception, it is sanctioned by non-empiric powers. Even accidental rule violation has effects in cosmic and social order, thus Baduy individuals are attentive in daily life. Baduy say deviance from *pikukuh* (as for example using the bus instead of walking, or possessing prohibited goods) will

cause a curse (*mamala*) that leads to illness and disease. The *mamala* disappears only, when rule violators confess their wrong and accept sanctioning—which is conciliatory and therapeutic in style. Rule violation triggers emotions of shame, discomfort, and guilt towards the community that seem to haunt the violator psychologically and spiritually. Rule violation is considered to cause disease, misfortune, and affliction. Fear of retaliation exercised by non-empiric authorities sets the boundaries for self-control, influences mind and psyche and overshadows emotions. This is the mandate of the ancestors, non-statutory—yet binding.

Kortschak (2010) tells us a story of one inner Baduy who had seen a bus pass by in the area outside his domain. “On an impulse, he has succumbed to temptation, and taken a ride. He just wanted to see what it was like. Then he went straight to the *Pu’un* and told him. The *Pu’un* said he and his family would have to move to the outer community.” The violator was neither shamed nor shunned, and he retained friendly relationships with his old community—“but he felt, he had forfeited the right to live with them. His conduct had placed him outside the inner circle.”

Every two weeks all inner Baduy meet at a clearing in one of the three *tangtu* (three villages in the core domain). In this forum all prohibitions, commandments, admissions, indemnifications as well as their sanctions are reiterated using the media of oral tradition. The elders tell myths, folk tales, and stories about origin and proper conduct. During these occasions, all members of the inner group are informed on a regular basis about the ancestral provision and their legal obligations and rights (Ayah Mursyid Interview January 2011). In consequence, the Baduy jural community

obtains their legal knowledge about the prohibitions from generation to generation through oral culture, imitation and usages. In addition, the inner and the outer community gather four times a year and hold a deliberation assembly (*musyawarah*) to discuss matters pertaining to both groups. Remarkably, despite the ‘archaic’ outlook of the inner group, they do not only hand down a modern traditional criminal code in terms of restorative justice, but they unfailingly insist on universal ethics as clean governance, environmental protection, sustainability, rule of law<sup>4</sup>- topics which are considered to rank among the top ten issues of modern civilization. Despite the group is labelled as “megalithic”, we find universal ethics which are taught as most important item in the Baduy legal and political lore.

#### **Baduy Legal Plurality and Legal Pluralism**

Two different legal systems for the inner and outer group are in effect, once more underscoring the crucial importance of the inner-out differentiation. Irrespective of their whereabouts, inner Baduy are under traditional jurisdiction only—except they commit an act classified as crime by the Indonesian Criminal Law outside their ancestral domain, then they cannot avoid liability within national jurisdiction (Interview Ayah Mursyid, January 2011). In contrast, the outer Baduy are under national jurisdiction and under traditional jurisdiction. Outer Baduy rule violators are submitted to Jaro Dainah, the formal village head, who in turn submits them to national authorities. Interestingly, having served a national sentence does not release a person from facing the adat tribunal. The reason is, national criminal prosecution does neither unbind rule violators

from their empiric obligation to restore social relationships within the village nor form their non-empiric obligation to restore the relationship between cosmic, social and ecological order—that is all adat dimensions (cf. PART I, the divine/ancestral sphere, social space, sentient and non-empiric non-human beings, natural environment) through the performance of the purifying and pacifying rituals. In case of a minor violation, the outer Baduy must report to the outer hamlet spiritual head (*kokolotan lembur*), in case of a gross violation, the *pu'un* of Cikeusik initiates Baduy justice enforcement. This shows a special plurality of Baduy adat law.

### III. Baduy Adat Criminal Law

We shall describe Baduy Adat Criminal Law of the inner group here, which is constituted by:

- 1.) Body of rules;
- 2.) Criminal procedural law; and
- 3.) Law enforcement mechanisms.

For a better understanding, first we shall discuss Baduy law enforcement mechanisms and criminal procedural law and then the body of rules defining rule violation. Similar to the principle of *ultimum remedium*, Baduy social control is structured in three levels with increasing authoritative intervention (cf. Black 1976; 1996; Griffith 1996), publicity, speed of action and ancestor consultation. Those three intervention levels apply in an integral manner in processing adat delicts:

1. Friendly pacification within the family with low publicity and as early as possible (minor delicts)
2. Mediation/ Arbitration by the *Jaro* with medium publicity and as early as possible

(minor delicts)

3. Two-step adjudication/repressive pacification at the level of the village, performing purifying ritual and consultation of ancestors (serious offenses)

From the three intervention levels above, we can see that Baduy delict code responds to rule violation as early as possible with a maximum amount of voluntary cooperation, a minimum amount of coercion and a minimum amount of actors involved as early as possible in time. At all costs, high levels of shame are to be prevented that could cause consequential violence and/or retaliation pursuing restoration of public peace (amicably empiric social, ecological and cosmic non-empiric relationships). Thus, processing of rule violation depends on the success of early mediation, and whether the sense of justice of the involved parties is met. The mode of intervention to be used is determined by two factors, first the class (minor-serious) of rule violation defined in the body of rules, and second the parties' (violation and victim) willingness to apologize and ask for forgiveness. In the event of serious rule violations, ritual performance is obligatory for spatially purifying the ancestral domain and all visible and non-visible beings living there from the effects of the committed rule violation. Ritual performance consults the ancestors for advice, asks them to forgive pollution caused by committed rule violation and signals rule violators having been restored into their place in the community and proper empiric and non-empiric relationships resurrected. As rule, the delict code discriminates between a primary victim, the target of the rule violation, and a secondary victim, the entire Baduy village. In case of serious rule violations that disturb all



empiric and non-empiric relationships, the village is always considered as secondary victim.

The basic [mechanism of conflict negotiation] is *musyawarah*, family negotiations, and [apology as well as] mutual forgiveness. If [the parties are] not satisfied, [the case] is handed over to the hamlet elders (*sesepuh*); if [the parties are still] not satisfied, [the case] is handed over to the jaro tujuh; if [the parties remain to be] not satisfied, [the case] is handed over to the village (*pu'un*) (Interview Ayah Mursid 2010).

Subsequent graphic illustrates the model of Baduy dispute process according to increasing authoritative intervention:

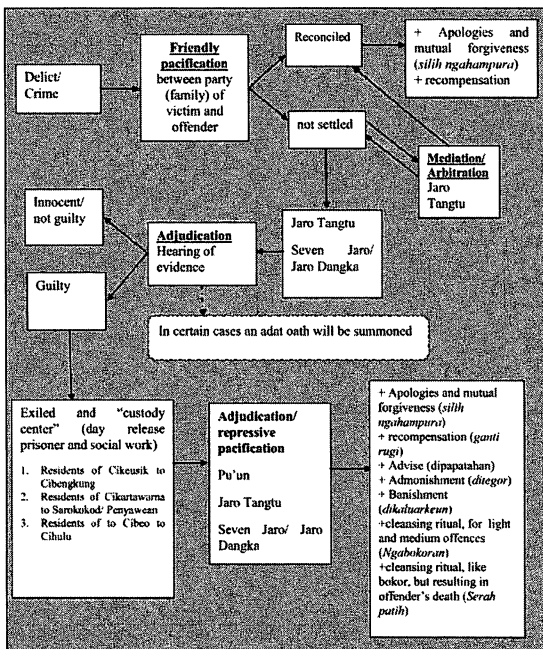


Figure 1: Mechanism of Dispute Settlement

**Friendly Pacification**

At the first level of friendly pacification

within the household minor violations are settled within the family at the lowest level of authoritative intervention involving only a few actors. The mechanism of reconciliation by apologies and mutual forgiveness accompanied by compensation of the victim by the rule violator is to be used. If a conflict is settled amicably, it is unnecessary to perform a ritual to correct rule violation. In consequence, the basic level of rule implementation is the household unit. The inner and outer Baduy male household head orders the life of his nuclear family, insofar as he controls and enforces adat norm conformity and rule compliance within his nuclear family; whereas the eldest of the extended family is responsible for settling matters between individuals from different nuclear families. In essence, household heads/family elders are the first instance of Baduy jurisdiction.

**Mediation/Arbitration**

When a case cannot be settled at the family level, the next authoritative level of conflict intervention is activated: mediation or arbitration, depending on the degree of authoritative intervention. At the second level of mediation or arbitration more actors are getting involved- thus dispute settlement is consigned from the individual level to the hamlet level. Accompanied by other adat representatives which act as witnesses, those adat leaders will investigate into the state of rule violation in the field. The *jaro tangtu*, as the executive law enforcer of the inner hamlets, intervenes in cases occurring in their hamlets. In contrast, if the outer Baduy are involved, the *kokolotan lembur* will be responsible for conflict settlement. They act as mediator or arbitrator - as third party- and presents the moral force of the community to

the conflicting parties. In case of a minor conflict or violation, the *jaro tangtu* or *kokolotan lembur* immediately intervene. If the parties to the conflict confess, apologise, forgive each other and agree upon compensation, the *Jaro Tangtu* does not pass a sentence. The concept of judicial pardon is thus applied in legal affairs, when no sentence is passed in the case of a minor violation. As a rule, if conflicts are pacified amicably, there is no need for a ritual.

#### **Adjudication/Repressive Pacification, Obligation and Ostracism**

When a conflict can neither be settled in an amicable way within the family nor between families, nor by a third party (mediation/arbitration) or if a conflict party is not contended or does not comply with the negotiated solution, then the matter is to consigned village adat jurisdiction (adjudication/repressive pacification). In brief, a dispute or serious offense/criminal act is consigned to the most authoritative and public level of intervention and brought before the village adat tribunal, if settlement procedures remain unsuccessful and all options for settling matters in an amicable way have been exhausted. At the third level of adjudication/repressive pacification, the entire village gains knowledge of the problem, in consequence the rule violation is known to all. Because at this level all villagers are involved, this level of intervention is the most shame based. When a serious violation has been committed, the case is automatically handed over to village adat jurisdiction. The conflict negotiation mechanisms of friendly pacification and third party intervention are automatically skipped in cases of serious delicts. For example, a land conflict is considered a serious delict as it automatically concerns the entire village. In this case, the

*jaro tangtu* and the *jaro dangka* initiate the negotiation process at the level of village jurisdiction. At the third intervention level, the concept of judicial pardon does not apply, because the transcendent ancestral dimension comes into play, which can be only taken care of by the *pu'un*. This public level always involves the performance of a purification ritual, because the committed rule violation disturbs the given balance of empiric and non-empiric relationships within the ancestral domain. In the event of serious rule violations, the adat tribunal headed by the *pu'un* performs a purification ritual to consult and ask the ancestors for forgiveness, cleanse the village spatially and all empiric and non-empiric relationships living there from pollution caused by rule violation, and to therapy the rule violator. In dispute processing the interactions and interrelatedness of all four domains of adat (the divine/ancestral sphere, social space, sentient and non-empiric non-human beings, nature) is visible.

Thus, when conflict parties cannot be reconciled, or in case of a serious offense, the adjudication/repressive pacification is to be used. The adat tribunal composed of *jaro tangtu*, *jaro tujuh*, *jaro dangka* and *pu'un* settles the case in a two step adjudication and two step ostracism mechanism. How does this gradual adjudication and ostracism work? First, the *jaro tujuh* and the *jaro tangtu* hear the evidence of the case, if the rule violators are found guilty; they are sent to a therapeutic-educative custody<sup>5</sup> (*diasingkan*) in the outer custody hamlets (*dangka*). At day time the rule violator has to do communal work as working at the huma, collecting firewood, and carrying water; in the evening the rule violator undergoes counselling on

Baduy values, norms and rules with the social worker (*jaro dangka*), who supervises and treats rule violators. If the rule violator escapes, it is the responsibility of the *jaro dangka* to search and find the renegade, because the incapability and fault of the *jaro dangka* becomes the liability of the entire clan. The *jaro dangka* must enforce the sanction in order to restore social relationships and public peace by guiding rule violators back into their place in community. In the second step of judicature, they are summoned to face the adat tribunal after custody.

Before we commence with the analysis of adjudicature, we need to discuss briefly the sanctions to be meted out by the tribunal and the obligation of rule violators—in adat, individuals have obligations and rights, rights rank second to obligations, only if you perform your responsibilities towards the family, clan and community, you may claim rights. (Landmann Interviews Baduy, Dayak, Bali 2011) Irrespective of the seriousness of the rule violation, adjudication/repressive pacification aims at restoring proper relations between empiric and non-empiric relationships or the dimensions of the adat world (the divine/ancestral sphere, social space, sentient and non-empiric non-human beings, nature). Adjudication/repressive pacification has two dimensions:

1. Physical/empiric obligation: Depending on the degree of seriousness, five sentences are meted out:
  1. reconciliation, apologies and mutual forgiveness,
  2. compensation,
  3. ordinance,
  4. reprimand
2. Inner/Non-empiric obligation: confession

and ritual performance as an expression of the rule violator's inner obligation towards the primary victim and the secondary victim, the Baduy village.

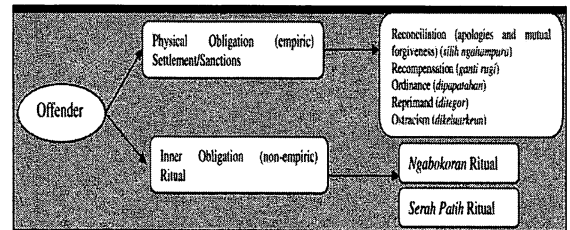


Figure 2: Concept of Obligation in Baduy Delict Code

Rule violators have a twofold obligation: the inner, non-empiric obligation to perform a ritual for restoring relationships between the four domains of adat; and the physical, empiric obligation to be sanctioned for the committed rule violation. In case of a less serious violation, a simple *ngabokoran* ritual is performed, but in case of a severe serious offense, the penal *serah patih* ritual has to be performed. In established legal practice, only a few explicit rules apply which ritual shall be performed or which sentence has to be meted out. Decisions are made on a case-to-case basis indicating flexibility and adjustment of sanctions to the particularities of a case with regard to the mode of settlement in dispute processing. Both rituals function to 1.) purify the ancestral domain and all non-empiric and empiric relationships from pollution pertaining to rule violation, 2.) ask the ancestors for forgiveness, 3.) restore rule violators into their place in community as an apology to ancestors, and 4.) restore non-empiric and empiric relationships and public peace.

The principle of *ultimum remedium* is followed at the most authoritative level of intervention. The mechanism of reconciliation by apologies,

mutual forgiveness, and compensation applies at all levels (household, mediation, arbitration/adjudication), therefore it seems to be the key mechanism of conflict negotiation and dispute processing. At a basic level, this key mechanism pursues the prevention of retaliation and restoration of relationships between all dimensions of adat. The mechanisms target a sustainable conflict solution as early as possible having a minimum of people involved. In case of two or more conflicting parties, the case is negotiated until reconciliation by apologies and mutual forgiveness is reached, and relationships are restored. Therewith cultivation of shame within individuals/nuclear families/clans is avoided as to prevent outbreaks of retaliation. The concept of avoiding shame as motivation forces dispute settlement with as few people as possible, the family or the clan, as early as possible to prevent escalation of emotion and in turn retaliation. A person's intention to breach a rule is thus regarded as seed or as potential for criminal acts that must be purified and brought to closure.

If the adat tribunal cannot settle the dispute amicably by reconciliation and compensation, verbal sanctions are meted out not only to children but all community members. The delict code discriminates between two basic verbal modes of sanctions: ordinance (*dipapatahan*) and the more serious sanction of reprimand (*ditegor*). The aim of those verbal sanctions is educative and therapeutic, to remind a violators of the rules, make the violator aware of the consequences of rule transgression and guide a violator back to the boundaries of acceptable behaviour. If rule violators or conflict parties do neither obey ordinance nor reprimand, they are classified as repeaters - this case is described in the section on recidivism.

At the most authoritative level of adjudication, the *pu'un* can expatriate a rule violator, because the last and most serious mode of sanction is the Malayo-Sumbawan sanction of ostracism, which results in the refusal of communal support and legal protection by the group of origin (Baier 1977: 455). We interpret ostracism or banishment as most severe social sanction, because the ostracised must cut family and ancestral ties and live without the support and protection of the Baduy community and ancestors. For the Baduy, ostracism is the most feared sanction - as is the *serah patih* ritual or the adat oath. When reconciliation and verbal sanctions do not apply in dispute settlement and in case of a very serious delict, the rule violator is banished (*dikaluarkeun*) from the inner area to the outer ring (*dangka*) for 40 days. Having served the 40 days therapeutic-educative custody, the *pu'un* and the *tangkasan* question the rule violators, whether they are aware now and whether they will repeat rule violation in the future. Challenged by those questions, rule violators who promise not to repeat their deviant course of action, are then asked whether they decide to rejoin or to leave the community. If they chose to comply with rules, they are restored to their place within the inner group, but if they chose not to comply with the strict rules of the inner core area, they are relocated to the outer ring, where rules are more lenient. However, whenever violators admit that they cannot refrain from their deviant course of action, they will be forced to leave the inner group and move to the outer ring - whether forever or a period of seven generations remains unclear. In severe cases or in case of repeaters, repressive pacification is to be used and rule violators are permanently expatriated

from the inner and outer community. In addition, inner Baduy considered too lenient in rule compliance, are expatriated with their nuclear family, because they are deemed to be spiritually immature and thus endangering the entire village.

In sum, we can say, that force and physical sanction constitute a minor element in the decision making process, which is dominated by social sanctions as advise, restoration, reconciliation and therapy or individual decisions. The inner group is hoped to comply with adat rules because this is the mandate entrusted upon them by their ancestors. Transgression and deviance are detrimental to group solidarity and survival. Those unable to cope with the strict code are free to leave the community after they were sent to the 40 days custody and the adat tribunal. However, clan relations will be maintained. Thus, despite having parted in religion and lifeway, those who have been banished to the outer zone or even from the village are not separated from their cultural centre, the Baduy village, since they continue to maintain kinship relations with the village, still attaining the yearly main religious festival, but they are not any more involved actively in ritual work (Hisyam 2003: 153).

#### **Rituals: Inner and Physical Obligations**

The *ngabokoran* is light compensation and purification ritual for a less serious delict according to established legal practice. As a sign of apology towards non-empiric authorities, the rule violator provides the adat tribunal in the *ngabokoran* ritual with a *bokor*, an offering used to prevent misfortune and disease. It contains areca nut, betel leaf, Gambier (used for chewing betel and black-dyeing), lime (used for chewing betel), styrax resin (incense from

styrax trees), white cloth, dagger (*keris*). If rule violators die prior to the performance of the ritual, death does not unbind them from their obligation (!) - the family must perform the ritual, but they must attach a larger amount of incense to the *bokor*. Areca nut, betel leaf, Gambier and lime will be chewed jointly by the *pu'un*, the *girang seurat*, the *baresan* and the *jaro tangtu*. The *girang seurat* and the *baresan* function as witnesses, whereas the *pu'un* and the *jaro tangtu* reinstall rule violators into the cosmic, social and ecological order. The *pu'un* informs the ancestors of the rule violator's reincorporation, while he burns the styrax resin; thereafter the *jaro tangtu* informs the residents within his hamlet that the rule violator has been restored. The *pu'un* and *jaro* specific duties exemplarily demonstrates their different function in spiritual/internal and political/external affairs within the *wiwitan* polity.

The *serah pati* ritual is a severe sentence for a serious offense according to established legal practice. It refers to a corporal purification ritual entailing elements of physical punishment leading to death under certain conditions - probably to the physical sanctions suffered, but most likely motivated psychologically through shame and fear of being cursed by the ancestors. Despite intense questioning, we could not yet obtain more exact data on the *serah pati*, as our informants preferred not to provide further details. It is also unclear if the *serah pati* can be performed without an adat oath pledge or is combined with the adat oath in all cases. Whenever an adat oath pledge is sentenced, which likewise can lead to death, the *serah patih* ritual must be performed. If a person either seizes a divine right, like for example, to take away somebody's life or deceits the community, as for instance, in land

conflicts, the *serah pati* ritual and the adat oath pledge are to be performed. Note, the adat oath must be pledged as a type of evidence or proof of integrity in case of land quarrels, and it is thus a characteristic of land quarrel dispute settlement which distinct this type of conflict from other delicts.

*Serah patih* ritual and adat oath are the only penal or physical sanctions we encountered in Baduy delict code, the remaining sanctions are social. Rule violators will most certainly not lie or withhold the truth, when they are sentenced to pledge the adat oath, because Baduy respect and fear the non-empiric authority of the adat oath, as they believe in the oath's power, its binding force and the dangerous consequences brought about, if someone intentionally lies in front of the adat tribunal which represents the power of the ancestors. According to our informants' experience, if younger outer Baduy who hold adat offices lie or withhold the truth after they pledged the adat oath, strange situations always will befall those persons. Those strange situations are either sudden, heavy or chronic disease or sudden death—this depends on the type of oath that has been pledged. In Bali certain adat offices are only consigned after an adat oath, which might be the case with the Baduy too. There seem to be several types of these oaths; and we indicate a need for further research. Landmann's Dayak and Balinese informants are likewise very afraid of the consequences of a breach of adat oath—because all four adat world domains act as witness to the oath, and a breach is univocally assumed to result in death and/or a seven generations curse for the descendants of the one who broke the oath. We can observe the curse of seven generations or banishment of a seven generations time span within

Balinese and Baduy delict codes.

#### IV. Body of Rules Defining Rule Violations: Change and Continuity

Though it cannot be said, that something like an unambiguous and comprehensive Baduy criminal code exists, as rules are transmitted orally and delicts are explained differently by each informant, nevertheless broad agreement as to the core of the code exists. This shared understanding provides for flexibility, latitude in interpretation on a case to case basis that meets the special particularity of the situation. Compared to the sphere of shared understanding, grey areas where interpretations and data diverge are rather marginal. Prior research has found varying systems of prohibitions: Ahmad (2008: 47–51) lists twelve prohibited items, whereas Salam (1987: 137) describes ten principles (*dasa sila*), which Halwany (1986) translates as "Ten Commandments". According to *Jaro Dainah*, *Jaro Sami* and *Ayah Mursyid*, interviewed by the authors, these lists are not exact. On the basis of our interviews, we propose the following classification of the Baduy delict code.

Applicable to all Baduy Actions regarded as criminal acts/adat delicts in Baduy delict code:	Applicable to Inner Baduy only Actions which are specific categories of deviance within the Baduy delict code. Prohibitions of:
Extramarital sexual intercourse (premarital sexual intercourse; adultery, incest, rape) and polygamy	Photography and audio visual picture
Slander/calumny	Smoking
Assault	Wearing gold
Killing	Alcoholic drinks
Land quarrel	Using pillows and blankets
Theft	Wearing modern clothes
Fraud	Using toiletries
Witchcraft/Black magic' (santet)	Using vehicles
Schooling	Foreigners (non-Indonesians) to enter the 'inner', sacrosanct ancestral domain
building of mosques	
alter state of soil to become wet rice fields	

Figure 3 : Classification of Baduy Delict Code

As already stated, the inner Baduy follow the general and specific rules more closely than the outer Baduy. If those rules cannot be followed by an individual, they are banished from the inner community. Most of the special rules applicable to inner Baduy do not apply strictly for outer Baduy. Criminal acts (serious offenses) are prohibited for all Baduy without compromise, whereas the special regulations apply mostly to the inner Baduy. Whereas the left column seems to represent the traditional basics of Baduy delict code, the right one, focused on the inner Baduy only reflects to a large extent a flexible contention with modernity and the necessity to adjust and broaden the delict code in order to provide a meaningful and holistic guide for the Baduy in the present time. However, this adjustment seems to be a gradual process, as the flexible and dynamic quality of *pikukuh karuhun* up to now guaranteed that change was continuous and not fundamentally disruptive to the traditional order.

Let us now consider, whether and how specific Baduy rules are enforced or adjusted. Even though the Baduy have lived geographically inaccessible, they never have been entirely isolated from their neighbors. They are agents who make conscious choices about their way of life, they interact with their neighbors and take them in account in by formulating this way of life. As the ancestral domain and Baduy culture were made a local tourist object, they come increasingly in contact with the acquisitions of modernity in the forms of cell phones, modern music, motorbikes, pin up girls or famous politicians and sports-heroes, but also such practical things like nails and nylon threads. Here, change and adaptation come into the picture, as in their course, the Baduy are confronted with acts that may be disapproved

by them without, however, being defined as rule-violation in the delict code—as there have been no pin-ups or cell phones in the old times, how to deal with it in a way consistent with tradition? Here the answer is evolution, concretely the adat leadership, the *pu'un*, the *girang serat*, the *baresan*, *tangkesan* and the *jaro*, will meet in deliberate assembly (*musyawarah*) and formulate a suitable punishment for a transgression that simply did not exist in the past. Some of their ancient rules have been adjusted in the past and are even more are adjusted in the present. With regard to the prohibitions pertaining to modern civilization as using money, reading, writing, keeping written papers, whistling tunes, singing songs, playing music or drama, dancing, owning mobile phones, most rules were adjusted for the outer Baduy, and do not result in an adat reaction. Interestingly, money may be used today as a means to recompense victims and straighten out wrong by the inner and outer Baduy. Thus the use of money as a currency and not as a ritual means became habitual.

The *Pu'un* adjusted the ancient dress code in allowing the use of modern material. Actually cloth must be weaved by the inner Baduy themselves, but because of the population growth, the production of cloth in the inner area is insufficient to supply their need nowadays, that is why they are forced to import cloth from outside the ancestral domain. Thus, Baduy do not wear self weaved cloth anymore, but cloth from cotton, however, in case of the inner group, the cloth may only be sewn by hand and they always walk barefoot, whereas the outer Baduy already wear modern shirts, shorts and sandals. In order to cleanse off improper impact and to apologise with the ancestors for breaching the rule by

importing cloth, the *Pu'un* decided that the village must perform the *ngabokoran* ritual after importing cloth to avert improprieties. The outer Baduy are allowed to travel by car or train nowadays, whereas the inner Baduy always travel by bare foot. Thus during the *Seba* Ceremony, the inner Baduy delegates depart three days prior to the meeting, whereas the outer Baduy use trucks. Univocally scholarship reports most Baduy cannot read or write Latin, because they are not allowed to go to government schools. Formal schooling and literacy are, however, not the same. Children of outer Baduy descent in the adjacent Muslim *kampung* and even some outer Baduy in the Baduy village do go to school. However, outer Baduy will be expelled from the outer ring to the adjacent area for visiting formal schooling. Since years, some outer Baduy are taught reading and writing Latin in informal schools. Also, some inner Baduy can read and write Latin and they also possess Indonesian books, as Ayah Mursyid for example, who has a small book collection and who even criticises mistakes concerning Baduy culture made by the authors. They do this and it does not evoke an adat reaction. Probably, because the Baduy refuse to learn writing and reading Latin in the Western school system, earlier accounts on the Baduy have probably equated school attendance with literacy. The 'scripts' they know are the simplified pre-colonial old Javanese script (*cacarakan*) used by Sundanese to write Sundanese language from 11<sup>th</sup> to 19<sup>th</sup> century. In addition, they know a sophisticated system of dotted patterned signs drawn on bambusticks ('*kolenjer*'), which are used to determine the agricultural circle and to foresee the future of nature, nation and persons. In our view, the

inner Baduy also begin to rely on media to gather information on global events in order to fulfil their task of protecting and supporting the 'Leaders of the North'.

### **Extramarital Sexual Intercourse**

Let us now turn to the various categories of the delict code. The Baduy delict code differentiates between 4 types of extramarital sexual intercourse (premarital sexual intercourse/adultery/incest/rape) and polygamy. Every Baduy (it seems that the males are regarded as rule violator and the woman as victim) who commits extramarital sexual intercourse (irrespective of subtype) is disciplined with 40 days *dangka* custody and has to do forced labour in the upland dry soil rice fields (*huma*) of the community during that time. Contrary to general Baduy legal procedure, in which a hearing of evidence comes first, in this case the rule violator is immediately sent to custody by the *Jaro Tangtu* and the *Jaro Dangka*. This is because extramarital acts are considered to be a stigma, a disgrace, which puts shame on all parties: the rule violator, the victim, the family and the entire community. It is very likely, that the logic behind the immediate detention is the avoidance of emotion, shame and thus violence. The seriousness of adultery is differentiated according to following considerations: premarital sexual intercourse that occurs between persons that are sympathetic towards each other is considered to be less serious than cases which involve 'the right of someone else' (*hak batur*).<sup>6</sup> Therefore, in the former case, the guilty persons are only advised to marry, if they are not closely related by birth. If they refuse to marry, the community waits for them to follow the advice of the *Pu'un* and in the end they marry. If the two are closely



related, as brother and sister or uncle and niece, the incest taboo applies, and they are not allowed to marry in order to protect the offspring. The offspring would be illegitimate, misbegotten and would shame and pollute the whole community. According to Jaro Sami, the *Jaro Tangtu* of Cibeo, the sentence for incest is for the rule violators to be drowned in the ocean.

*“Incest cannot be healed/restored. Ngabokoran – it is useless; ostracism from the inner group – it is useless. It does not work, because the act will not be healed/restored in its course, it is the maximum sentence, the sentence is: [that the two must; A.L.] be tied up and drowned in the ocean, because the course of the action cannot be forgiven, it is the maximal sin, there is no way out of this”* (Interview April 2010)

As Jaro Sami admits, adultery occurs regularly. The most frequent sanction is ostracism from the inner hamlet—the violators are either banished to the outer ring, but usually the violators ask to move to the outer ring, even if they are not banished by adat authority. In any case, a special sin purifying ritual (*ruruba*) is performed, and sometimes the rule violators are temporarily married. Rape is differentiated from all other types of sexual delicts, because the coercion and violence is involved in the offense. In case, the victim wants to be married to the rapist, he will be sentenced after custody, but usually the rapist is expelled from the inner community (and from the outer community). Even though polygamy is not forbidden in Indonesia, it is strictly interdicted in the ancestral domain to have more than one husband or wife at one time. In case, an outer Baduy wants to marry

another wife, he must first divorce his first wife. The inner Baduy, however, can only be divorced by death, and then are free to marry again. A polyandrist or polygamist will undergo a tribunal and be summoned to choose which one of his partners he or she will abandon. The polygamist is exiled, but does not have to do forced labour. The outer Baduy Jaro Dainah, the formal village head, has two wives, but he remains in impunity, thus there is a discrepancy between theory and practice at the interface of tradition and modernity.

### **Calumny**

The degree of calumny as criminal act is determined by the target of the act. If the target is a member of the adat leadership ranks, the punishment will be more severe as in case of a common Baduy. Adat leadership ranks must be jointly honoured by the community, as they are the institution that enforces the *pikukuh* and the eldest humans on earth. In consequence, cases of calumny among common Baduy will be settled at the family level by friendly pacification, whereas calumny against adat officials must be answered by adat adjudication.

### **Assault and Land Quarrels**

Assault is determined by the degree of seriousness of violence. A minor assault, a little brawl for example, is mediated by the *Jaro Tangtu* at family level. If it is a severe assault, it is settled by adat adjudication following principle of *ultimum remedium* – to be explained in the following section. However, the outer Baduy Saidam, as well as Ulumi (Interviews 2011) attests that assault very rarely happens because the Baduy are an anti-violence community (Interview Ulumi 2011). If there

are indications of hate between two people, there is always a third party that intervenes and facilitates mediation in order to achieve reconciliation. The atmosphere of the village is generally peaceful and the Baduy very seldom argue or fight (Interview Saidam 05.02.2010) Saidam could not recollect a single event of assault in the Baduy community. Also, Kurnia (2010: 28–29) speaks of a harmonious and peaceful relationship within and between the inner and outer community. However, we observed tension or competitive behaviour between the outer and inner groups and across the three inner groups.

Land quarrels are the most frequent type of conflict in the Baduy community (Suputra 1950, Kompas 1994, Haji Sapin, Kanekes Baduy Village Secretary, Interview 2009). As the right to land use is hereditary within families, but there exist no land titles, land quarrels increasingly occur as the population is growing within the spatially limited ancestral domain and soil becomes scarce. Cases of illegal annexation of land between inner and outer Baduy are handled collectively by the *Jaro Tangtu* and the seven *Jaro* which investigate the situation and collect information. The conflicting parties are summoned and the adat leaders investigate on the merits of the case. According to Ayah Mursyid, if a person has illegitimately annexed land, the rule violator has to recompense the victim. If the timber which has been on the land has been cut down, it has to be recompensed with timber of the same quality or by money. If necessary, the family of the rule violator is held liable. The adat oath is sentenced, if the conflicting parties are unwilling to compromise. The *Jaros* also have to deal with illegal annexation of Baduy land by non-Baduy villagers settling in

the vicinity of the ancestral domain, for this they installed zoning controls.

### **Homicide**

Remember that the delict code has been given in its original form to the first *Pu'un*, whose successors perpetuate and adjust it during the course of times on base of their arcane knowledge. Although the delict code lists the categories of assault and homicide, such cases seem to be very rare. Murder is regarded as capital crime, because the rule violator seizes the right of the divine, which is to give and take life. Murder must be sentenced severely – in theory. One wonders now, if cases of assault are recorded seldom, whether the Baduy have experience with homicide. The Baduy and researchers we interviewed can only recollect one case of homicide among the Baduy. This is the 2005 case of Sadim. Sadim was a resident of *tangtu* Cibeo, who worked as a day labourer in an adjacent non-Baduy village. He killed Kamsina, the mother of his employee, and seriously injured his employee Yadi and his wife Aisah in trance. The location of the criminal act was situated outside the ancestral domain, but Sadim obligations were enforced by adat and he was summoned to an adat tribunal, even after the district court of Rangkasbitung convicted him to a seven month' imprisonment. In Sadim's case, where the national and the traditional justice systems conflict, the principle of *ne bis in idem* (no legal action can be initiated twice for the same cause of action) does not apply. Even though Sadim had been already been convicted in the national law system, he must account for his actions by facing a adat tribunal, since inner Baduy tradition is binding for all inner Baduy

everywhere and at any time. Sadim has died during the 40 days custody after imprisonment caused by bad nutrition during his sentence in prison and mental diseases as shame, depression and guilt (Ayah Mursyid, 2011).

As Ayah Mursyid told us, the Baduy could not recollect a single case of murder at that time, and they were deeply shocked by the crime and in the beginning they did not know what do. The adat leadership met in a *musyawarah* and developed a sentence for a transgression that simply did not exist in the past. According to Jaro Sami, a murderer is sentenced to custody and penitence for 40 days. He has to perform and finance the *serah patih* ritual, and finally the violator and his family are expelled from the community for seven generations a time span, during which they are not permitted to participate in rituals. Thus on the base of mutual agreement, the adat leadership criminalises, or in other words, had retroactively changed here the legal consequences of actions committed or relationships that existed prior to the enactment of the rule, thereby also complementing a traditional code to make him meaningful in the present.

#### **Fraud and Theft**

The delict of fraud or theft is attested by the victim. If the offense cannot be recompensed and reconciled at the family level, it is handed over to the next level of mediation and arbitration, according to the principle of *ultimum remedium*. In case of theft, the thief must recompense the victim and apologise for the deed in order to achieve mutual forgiveness. In case, he is not willing to refrain from repeating the violation, he is expelled from the inner community. If the thief dies prior to the compensation of the victim, the obligation to

recompense the victim and thereby restore peace is conferred to the *sabah* (the rule violators' father's or mother's family). As in theft, liability in fraud offenses is oriented towards the compensation of the victim. Thus victim and the violator make a general agreement on the mode of compensation. If the violator cannot recompense the victim, he has to alienate his *huma* or rice seeds, if the violator has no property at all, the family of his mother or father will be liable.

#### **Black Magic<sup>7</sup>**

Black magic (*julid*), is a non-empiric science and enterprise with the aim to cause disease, death or destruction to someone's business. According to Jaro Sami, to practice black magic to bewitch someone else (*julid ka papada*) is a capital sin and classified as felony, because after death, the black magic practitioner is not allowed to enter the 'after-world'. Jaro Sami says persons who instruct somebody to practice black magic or persons practicing black magic themselves are categorised as persons full of envious resentment (*sirik pidik*) because they do barbarical things to other persons. Black magic practitioners violate the *pikukuh karuhun* and they rob the Divine's right to take someone life. The sentence is the same as in case of incest: to be tied up and drowned in the ocean (*ditalian dibalangkeun ka laut*).

#### **Sanctity of Sanctuary**

Access to the megalithic sanctuary and the forbidden forest is without exceptions interdicted for anyone. Everyone who violates this rule will be punished, a rule which is in effect since hundreds of years. Abdul Salam (1986: 78) has been reprimanded prior to entering the

forbidden forest by the Girang Pu'un:

*"I strictly prohibit anyone to enter the forest and sanctuary, because it is our ancestral sanctuary, we who are entrusted with it, are afraid of kualat (draining of potency, curse). Do not ask further, because inexperience has also effects. If you don't want to be deported, and become a good visitor, do what we allow you to. If you violate the rules-even if we do not notice it-you will be cursed and this will put you into danger. We can't compare people, who violate prohibitions with people who eat chilli, the moment we bite it, we taste its spiciness immediately. Yet-sooner or later there will an effect, because this place was made for us to request welfare for the entire world. You may participate in the course of our ritual, but without voice recorder and camera. We will keep that equipment for you, and will return it to you before leaving our domain, because this is the mandate of our ancestors."*

A Baduy rule violator is sentenced to three month hard work. Within this time span, the violator must recompense his wrong with "ngabokoran". The rule violator or his family must submit the "ngabokoran" to the Girang Pu'un, witnessed by the jaro, during the request to be forgiven. The Girang Pu'un explains the significance of the Kawalu pilgrimage, its importance, the function of the forest and the life within it. He explains the benefit, utility and philosophy of the sanctuary. Beyond treatment, the violator promises not to repeat their offense. Only after the promise, the climax of the ritual is held, initiated by the jaro who surrenders the rule violator to the pu'un, who takes both hands of the rule violator as a sign of his restoration. Styrax resin is burned

and accompanies the pu'un prayers who requests the ancestors to forgive the violator, but only if they are prepared not to repeat the wrong. Then the rule violator is returned to the jaro, who informs the community. (Salam 1987: 34-35)

In case the rule violator does not offer the bokor within three month, they will be expatriated from the inner community and "down ranked" to the outer ring. All land owned and fields worked are confiscated and will be communal possession. If an outer Baduy acts in such a way, they will be permanently exiled to non-Baduy territory. If a non-Baduy is caught, he or she will be held a tribunal, given a money penalty and he or she will be escorted outside the ancestral domain and not allowed to return. Even repeaters are forgiven and maintain friendly relation, as in the case of Haji Lukman Hakim, who violated the rules three times and maintains close friendship relations. Lukman twice smuggled foreigners, and he claims having visited *Panembahan Sasaka Domas*.

*"Twice I violated Baduy rules, because I needed to know if they are still in effect. (...) The pu'uns words are law - it is unwritten law - but the pu'un I encountered, knew it inside out. (...) "I commit my fault, please forgive me, I was wrong indeed. If I am wrong, please straighten my fault - I am forbidden to visit Sasaka Domas". I was sanctioned to recompense with 10 items difficult to acquire. Then I ask, whether I can pay a fine. I paid 200.000 Rupiah in 1986"* (Interview Haji Lukman Hakim Februari 2011).

### Modern Media

In the inner territory all photographing and

audio visual recording is interdicted, for inner, outer and non-Baduy alike. Note the case of Trans-TV, in which the *Pu'un* triumvirate summoned the editor under the protective principle to an adat tribunal within the ancestral domain and sentenced Trans-TV to pay a fine. In 2009, a Trans-TV team secretly recorded and photographed the inner area and broadcast the recordings in a documentary report. The knowledge of this breach of Baduy prohibitions reached the inner Baduy. They immediately protested the offense, and after protests increased, eventually Trans-TV apologised in a mediation process chaired by Taufikurahman Ruki, former chair of the Corruption Eradication Commission, who originates from the Lebak district. Jaro Sami, Cibeo, said, after this offense they were forced to perform the *ngabokoran*, a confession and apology ritual to ancestral spirits, and to cleanse the village with a purification ritual (*panyapuan*) to restore peace.

#### **Prohibition for Foreigners to Enter Core Area**

It is not true that no foreigners have been entering the inner domain. Non-Baduy visitors to the inner area were Blume in 1822, Koorders in 1864, and Koolhoven in 1930. Bakels and Boevink were initially refused permission to stay with the Baduy longer than one day and night. When they said they wanted to get to know the Baduy, the reply was that this was prohibited by traditional rules (van Zanten 1995: 519). The historian Halwany Michrob and the journalist Haji Lukman Hakim have smuggled foreigners inside of the domain. If foreigners enter the inner area, the area has to be cleaned with a *panyapuan* ritual.

#### **Smoking and Drinking**

Actually, smoking and consuming alcoholic drinks is prohibited for inner Baduy in the inner and outer area, however, several outer Baduy smoke and drink fresh areca palm wine (*tuak*). They would not smoke or drink in front of adat leadership, because they could be sentenced to pay a fine, and they would not smoke in the inner area. Likewise, all inner Baduy are strictly forbidden to wear, own and store gold, in the inner and the outer zone. The outer Baduy women, who are well organised and sell their dyed and woven material, wear a lot of gold jewellery which shows their material wealth. Interestingly, village head Jaro Dainah, who has two wives without being sentenced by the adat tribunal, smokes openly, and his second wife is adorned with gold jewellery so heavy, one is afraid she cannot carry the load any longer. All inner Baduy and visitors to the inner Baduy area are not allowed to use soap, tooth paste and shampoo in the inner area. Concerning rule violation, non-Baduy violators recollect mysterious stories (Irawan Interview 2011; Ulumi Interview 2011). A visitor to the inner area, who used soap and shampoo while having a bath in the river, went astray in the forest a whole day and could only leave the woods, because an inner Baduy guided him outside. His friend was slapped on his cheek without having met anybody.

#### **IV.1. General Rules: Standards and Principles**

Within their ancestral domain, the *pu'un* institution can handle violations committed by Baduy and non-Baduy alike on base of *pikukuh karuhun*. In doing so, it follows a number of crucial principles of criminal codes around the globe.

**(a) *Ultimum remedium/Subsidiarity principle***

*Ultimum remedium* or well-known also as subsidiarity principle exists in Baduy. With this principle, Baduy people allowed to settle their case privately between victim and offender. Adjudication will be 'the last resort' to be conducted if friendly pacification failed in reaching consensus.

**(b) *No liability without blameworthiness***

The adat delict code differentiates between degrees of seriousness of crime: a serious violation is punished harshly, whereas a minor violation is sentenced milder. The standard applied to gauge the seriousness of a criminal act is the degree to which the act has shocked the Baduy feeling of justice. Thus the standard for measuring seriousness and the appropriate sentence used by traditional adjudication is to which degree a crime against humanity exists according to Baduy sense of justice.

In a theft case, we investigate into the motives and the reason why the rule violator has stolen. If he or she was hungry, this is not a problem, nor is it a problem if he or she went by the tree and took one or two mangos only. Thus we consider the motives and factors of theft. Taking two mangos is different than to take one or two kilo mangos. (Interview Jaro Dainah 2010)

Jaro Dainah's statement exemplifies that the concept of theft (taking the property of someone else) is recognised as rule violation in Baduy delict code. However, the degree of seriousness is gauged by measuring the level of liability according to the rule violator's mental fault elements and the physical act. Obviously, the physical act of taking two

mangos, if one is hungry or out of pleasure, does not violate the feeling of justice within the Baduy community. Therefore the act does not constitute a delict itself, and one is not criminalised. If someone has the intent to steal two kilo mangos and the motive to sell them for personal gain, the condition of mental fault is met and the physical act of taking mangos then constitutes a delict. With reference to modern law, Fathurokhman argues, that the concept of no liability without blameworthiness<sup>8</sup> is established in traditional Baduy legal affairs.

**(c) *Musyawah***

The next principle is collegial-consensual negotiation or traditional consultation (*musyawarah*<sup>9</sup>). *Musyawah* is concerned with Baduy political and legal affairs, or external governance, and calls for decision making processes through deliberation. According to Ayah Mursyid, *musyawarah* is the basic mechanism of adat reactions or the processing of norm violations or criminal acts in the ancestral domain. The *pu'un* triumvirate has the task to draw the final decision as a "summary" of what they have heard during consultation and on base of their arcane *pikukuh* knowledge. However, the last decision is with the *Girang Pu'un*, Cikeusik.

Collegial-consensual negotiation as the central form of dispute settlement is initiated by the victim. During *musyawarah*, it is negotiated what the victim and his/her family claim or request as compensation for the damage or harm suffered, and what can be done by the rule violator and their family to cure the feeling of guilt and shame in order to "close" the case to avoid retaliation. (Interview Ayah Mursyid 2009) Thus *musyawarah*, collegial-consensual negotiation, is the central characteristic of socio-politico-legal order among the Baduy.

**(d) Territorial Principle**

The territorial principle governs the purview of the Baduy delict code under which the traditional authorities can prosecute deviant acts that are committed within its borders, without considering the rule violator's nationality. Consequently, adat judicature may sentence Baduy and non-Baduy for rule violation within the ancestral domain. Interestingly, the purview of delict code may even be extended outside the ancestral domain under the passive personality principle and the protective principle. The condition to be met for the extension is that either the deviant act has been committed by a Baduy or to the detriment of the Baduy community.

**(e) Passive Personality Principle**

The passive personality principle extends the purview of the Baduy delict code under which traditional authority can prosecute offenses within its sovereign territory to offenses committed outside its territory. Consequently, adat judicature may sentence a Baduy, who committed a rule violation outside the ancestral domain. Inner Baduy are bound by their delict code without regarding their whereabouts. If an inner Baduy deviates from the traditional rules outside the ancestral domain, they have to answer for rule violation in an adat tribunal. This has happened in the homicide case of Sadim in August 2005.

**(f) Protective principle**

The protective principle permits the traditional authorities to grant extraterritorial effect to their *pikukuh karuhun* criminalising conduct that is regarded as damaging to security or other interests. In this light, the interest of *pikukuh karuhun* claims protection, so that

whoever damages the interest of Baduy tradition is envisaged to account for his or her course of action. The application of this principle applies, when the Baduy request a non-Baduy to answer for his actions. This happened to curious Indonesian journalists, visitors, academics who either smuggled 'non-Indonesians' into the inner zone or took audio-visual recordings from the inner area.

**IV.2. Forms of Crime****Multiplicity**

Concerning the charging of multiple offenses arising out of the same act or transaction, Baduy delict code does not recognise concurrent sentences<sup>10</sup>. Usually consecutive sentences are imposed. A rule violator, whose rule violation breaks more than one rule, is asked to answer his or her offense by taking empirical and non-empirical responsibility for all offenses. If there is more than one victim, each victim needs to be reconciled and recompensed; therefore the rule violator must take responsibility for his acts in all cases. Because no one can forecast the empiric and non-empiric consequences of rule violation, delicts are not fused, as in the concurrent sentences, but each delict is punished one-by-one. Since each delict is thought to disturb the empiric and non-empiric order, it constitutes a breach of sacrosanct rules for which the community is collectively liable. The rule violator is held responsible for each deviant act and for reconciling and recompensing each single victim.

**Attempted crime**

The Baduy differentiate between mental fault (the conscious intention to breach a rule or to commit a delict), attempted crime and the

delict itself as physical or objective element of crime. In Baduy delict code, a delict alone does not make the violator guilty, because there are several defences recognised. Not only the delict, but intention alone or the attempt can make a person guilty. For the Baduy, a person's intention mirrors his inner stance. For example, if someone intends to steal, the intention to steal becomes an offense, because the intention is wrong, that is, it deviates from the rules. In case of homicide, the intention is essentially wrong, and thus it doesn't matter at all whether the victim dies or survives – the mind is guilty and rule violator must stand a trial. Likewise, in case of attempted crime, the rule violator must stand trial. If wrong intention or attempted crime results in the completion of the intended and attempted delict, as for example, the death of a person, the punishment is meted out according to the rules for homicide. However, according to Ayah Mursyid, the intention to murder is so extraordinary in extent among the Baduy that they must be alert and the traditional authorities must investigate how the intention could come into existence.

**Recidivism**

Recidivism is not charged with an intensified sentence, but with a gradual rising of the level of authoritative intervention by the adat leadership ranks. In case of theft for example, the case is settled at the family level by negotiation and friendly pacification. If the act is repeated, the case will be handled by the *jaro tangtu*. The *jaro tangtu* and the *kokolot lembur* (the elders of the hamlet) negotiate a reconciliation mode for the case (*musyawarah*), the *tangkaesan* also consults non-empirical forces and looks whether spiritual, mental or physical

improprieties have befallen the repeater, which need to be cleansed and purified. If the person repeats his course of action a third time, the repeater is regarded as habitual criminal and the case is consigned to adat judicature. Ayah Mursyid, however, states that such a habitual criminality is very unlikely, because during mediation/arbitration, the repeater has to swear the adat oath. Usually, if the 'habitual criminal' repeats the deviant act, he will be cursed, because he had pledged the adat oath; either he will fall seriously ill or will have a short life/die, depending on the oath mantra.

Schematically the handling of recidivism may be illustrated as follows:

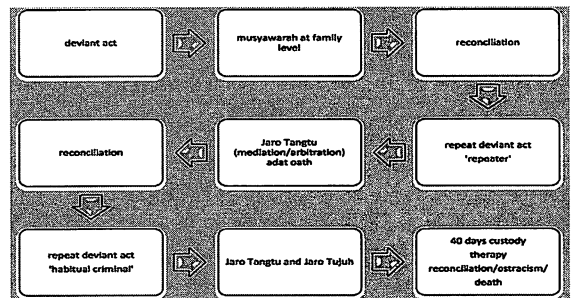


Figure 4: Scheme of Recidivism Handling

**Complicity/Accomplice Liability**

With regard to complicity/accomplice liability, Baduy Delict code does not differentiate between *animus auctoris* and *animus socii*, and criminal actors are not sentenced according to their classification as principle actors and/or accessories according to the type of assistance in the criminal act. In passing the sentences, criminal actors are differentiated into actual perpetrator, inciter (*nitah*), and co-perpetrator (whose delegate?), but this differentiation does not play out in sentencing, since the condition of the guilty mind is equally met by all.



Therefore accomplice liability is sentenced in the same way as the principle criminal actor.

### **Conspiracy/Conspiratorial liability**

In case of conspiratorial liability, two or more persons reach a mutual understanding to plot a deviant act. Thus, all actors who gather in conspiracy are liable for the course of action. As for the Baduy deviant intention suffices as an offence, with respect to sanctioning, it does not matter whether the conspiracy is cancelled, carried out, or comes to light. The co-conspirators are summoned and it is investigated what the reasons may be and why they developed a wrong intention towards another person.

### **IV.3. Defences to liability**

Most criminal codes recognise various defences to liability, as for example, the insanity defence, defence of infancy, and self-defence or defence of other. These defences to liability are also recognised in Baduy Delict code.

#### **Defence of insanity**

All people who show signs of insanity are classified as insane (*edan/gila*). The handicapped person itself is not liable, if he or she commits a criminal act, but liability is conferred upon the parents and the family of the person. Thereby the victim is reconciled by apologies, forgiveness and compensation. However, prior to the liability confer; it is investigated with maximum scrutiny whether the rule violator is indeed insane or if they just pretend to avoid the sentence.

#### **Defence of infancy**

If an infant (the age limit is between 10 and 15 years) commits a criminal act, the rule

violator is relocated from the youth camp (male youth above 15 sleeps in the village hall and is educated by the *Pu'un*) to the parents as the first instance in Baduy jurisdiction. This is similar to the defence of insanity, when liability for the criminal act is conferred on the parents or the family of the insane person. If the parents declare their incapability to re-educate the rule violator, they are handed over to the adat jurisdiction. Thus, the defences of insanity and infancy constitute a cause of unquestioning forgiveness, which exempts the rule violator from being sentenced. In Baduy legal awareness, the delict disturbs the peace within cosmic and social order, and order must be restored and the victim reconciled. In consequence, the liability for the criminal act is conferred on the parents or the family of the rule violator, and it is now their liability to restore the disturbed order.

#### **Right to self-defence and defence of other**

Baduy Delict code recognises the right to self defence and the defence of other, including the concept of justifiable homicide, similar to American 'stand-your-ground-laws'. In the concept of justifiable homicide, a person who uses the right to self defence or defence of the other can be exempted from punishment, even if the legitimate measure of violence is transgressed, and the rule violator is killed during the act of self defence. Baduy adjudication however will pass the sentence of a *serah patih* cleansing and purification ritual. Because a soul was lost (*ngalengitkeun jiwa*) in the act of self-defence, an impure state is caused, and to clean off the impacts of the criminal act from the perpetrator and the entire village community, the *serah patih* ritual must be held.

## V. Conclusion

The local legal traditions (*adats*) are a specific feature of the Indo-Melanesian legal tradition in Indonesia. Despite plurality of *adats*, *adat* laws have certain mechanisms in common: mediation, negotiation, and therapy. These mechanisms do not enforce decisions on the parties but rely on solutions cooperatively agreed on by all parties. Unlike in coercive forms of social control, there are no winners or losers, but each conflict party "gives a little and gets a little" in the interest of compromise and consensus (Nader 1969 in Horwitz 1984). The foremost aim of Baduy justice and policing is the reparation of disturbed relationships, the restoration of the rule violator and victim to their place in social structure aiming at preventing revenge and circles of retaliation and the restoration of the cosmic and social order. Delicts are regarded primarily as minor or gross violations of relationships, and only secondarily as a violation of substantive law. Not objective truth, wrong and right, but compromise, apology, forgiveness and compensation are indispensable in face-face or village level polities as villagers depend on each other in order to prevent the erosion or rupture of social relations and the communal body. In this, Baduy delict code includes pre-colonial Malayo-Sumbawan or medieval Sundanese concepts of 'restorative justice', which might prove helpful in developing sustainable local informal conflict solution mechanisms.

Baduy justice is integrated into communal life and does not constitute a separate or specialized authority, which intrudes when needed for public order. In the structure of the communal group, interaction occurs within the same interlocking network of constant and

close relationships. Therefore, when deviance arises, the group can react strongly to reintegrate the deviant back into it (Horwitz 1984) and thereby prevent revenge and circles of retaliation between clans or groups.

The Baduy delict code follows a three step mechanism of traditional dispute settlement with increasing authoritative intervention and public recognition: 1.) friendly pacification at the family level; 2.) mediation and arbitration by a third party; and 3.) adjudication or repressive pacification by traditional authority. In general, conflicts are settled at the lowest level of authoritative intervention and public recognition. Only when conflict parties cannot settle matters in an amicable way, or when serious rule violations were committed, a case is conferred gradually to the more authoritative and public mechanisms of third party intervention (mediation, arbitration, or adjudication). Because adjudication involves many people and non-empiric authorities, this public mode of intervention is the most shame based and is therefore avoided, whenever possible.

As deviance is interpreted through a small number of ritualized categories, the therapeutic style of social control is applied. Those categories are of a public nature that allows persons, families and the group to locate the experience in the communal interpretation pattern of the group. The therapeutic process reaffirms the normative order of the group, because it promotes the likeness of the rule violator/victim to other persons in the group and promotes the need for conformity to group norms and thereby prevents violence, revenge and circles of retaliation. In this, conciliatory and therapeutic social control are encapsulating styles, they combat individuality and stress commonality by reintegrating the rule violator

into the group and reinforcing solidarity of the communal body. (Horwitz 1984, Black 1998) The crucial aspect of the therapeutic style in tribal groups is the promotion of conformity to group norms and the value of group solidarity. One frequently used method to achieve this conformity by tribal groups is confession. We have described confession as ritualized mechanism within the Baduy system of adjudication.

Our research showed that there is hardly any element of coercive force entailed in rule compliance. The inner Baduy voluntarily comply with adat, since they perceive rule compliance as religious service. If they are unable to follow the strict rules, they are free to leave. However, a small number of exemptions exist in which coercion would be applied against the norm-breaker, like for example incest with which the Baduy deal by capital punishment. Interestingly, neither did the literature nor our field research produce any single case of such an offense that would not be dealt with within the non-violent range of penalization. This and the fact, that the Baduy can hardly recall a case of homicide, lets us conclude that they are a strongly non-violent community. The penal system tends to be violence-free, social sanctions, this is therapeutic and conciliatory mechanisms outweigh penal sanctions and corporal punishment; conciliation and restoration win over punishment.

*Pikukuh karuhun* is upheld by inventing new norms and rules through the mechanisms of *musyawarah* (collegial-consensual negotiation). The inclusion of new prohibitions and rules into the contemporary Baduy delict code may be seen as a modern reflection of one possible ancient Malayo-Sumbawan social structure, which incorporates social change by integrating it into traditional social order and the communal body. Thus, a flexible approach to dispute

settlement, collegial-consensual negotiation (*musyawarah*), therapy and a ritualistic conciliatory style of social control (apology, ritual and recompense) are features to be found all over the western part of Indonesia. The principle of *ultimum remedium* (three step mechanism of traditional dispute settlement with increasing authoritative intervention and public recognition) is practiced today not only amongst the Baduy, but also among the Balinese, Dayak and the Sulunese. The concept of *musyawarah* appears as a major trajectory of the legal process among all of these groups and despite its outwardly Islamic trappings, *musyawarah*, is actually a feature common to all Malayo-Polynesian populations' as the practice of *musyawarah* in the Philippines shows. Then, we propose ostracism to be an Indo-Melanesian (Bornean and Malayo-Sumbawan), but not a Malayo-Polynesian tradition, since in the Philippines, we find no evidence of ostracism. Comparative research in other ethnic groups is needed to support or disprove our hypothesis.

#### Notes

- <sup>1</sup> The present paper is the result of joint research of Ferry Fathurokhman, Universitas Sultan Ageng Tirtayasa, Serang, Banten, financed by Directorate General of Higher Education, Ministry of National Education Republic of Indonesia and the Project Group on Genesis, Structure, and Mechanisms of Systems of Violent Social Control at the Peace Research Institute Frankfurt. Research has been partially financed also by a grant from the Deutsche Forschungs-Gemeinschaft. A short version of this article was presented at Southeast Asia Update 3, held by the van Vollenhoven Institute, in Leiden on 24 June

2011.

- 2 It has long been a matter of discussion how the group came to be called Baduy; the consensus seems that the name Baduy was given to them by their Muslim neighbours or Dutch colonizers as a derogatory epithet. The Baduy themselves do not use terms as inner Baduy or outer Baduy (Kurnia, 2010: 16). The following text uses the term Baduy, when we speak of the group or the domain as a whole, and the terms inner Baduy or outer Baduy as analytical categories, if we refer to the group settling in the core area or to the group inhabiting the protective ring around the inner core.
- 3 Kreuzer: 2009, 2010, 2011; in: www.hsfk.de
- 4 Cf. Part I, according to Baduy self-perception, their ancestor gave them the mandate to act as guardians of the forest, irrigation sources, soil and at the same time to be responsible for the destiny of the world. Up to present, they maintain 'their destiny' harmonically by nurturing the forest and live together respectfully and peacefully.
- 5 The idea of custody refers to the concept of therapy instead of detention. The violator is on a day parole. Depending on their place of residence, the person is sent to a specific house in a *dangka* hamlet appointed by the *Jaro Dangka*.
- 6 In these latter cases, when the girl friend or the wife of someone is involved, the punishment is severe.
- 7 Interestingly, despite the western part of Java differs linguistically, culturally and legally from Central Java, the Baduy categorising of black magic corresponds with the category of "tenung" in § 13 in the Majapahit law code, the great medieval Central Javanese kingdom, which classified black magic to be one of the six capitals sins (*tatayi*). This tradition continuous up to the present as a new draft of the Indonesian Criminal Code encloses a black-magic article (*pasal santet*). Several members of the parliament are planned to travel to

England and the Netherlands to conduct a comparative study on black-magic articles in 2013.

- 8 A physical act does not make an offender guilty without mental fault
- 9 During our interviews, the respondents used the Arabic or Islamic term *musyawarah* without exception. We did not ask whether they possess a Sundanese equivalent to term *musyawarah*.
- 10 Multiplicity or *concursum idealis* denotes the fact that one act constitutes an offense in more than one rule. In contrast, in case of *concursum realis* or multiple crimes, that is a set of offenses, a consecutive sentence is formed, in which a single sentence is charged on each criminal act.

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