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Revitalization of Biak Numfor Customary Dispute Resolution: Harmonization of the Criminal Justice System in Indonesia

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Original Article

Abstract

Customary law is an option in resolving problems and disputes that occur in the indigenous people of Biak Numfor Regency. However, with the passage of Law Number 1 of 2023 concerning the Criminal Code, in deciding all problems, they still pay attention to the laws that live in society. Of course, this will cause an overlap between the two legal systems so that it requires revitalization and harmonization of the two laws. The research is a type of empirical research using the legal pluralism approach. As for this study, snowball sampling and purposive sampling are used in answering the problems raised. The results of the study show that customary law can be harmonized with positive law but with slight changes the difference between the two laws.

Keywords: *revitalisation, harmonisation, customary law, restorative justice.*

Abstrak

Hukum adat merupakan pilihan dalam menyelesaikan permasalahan dan sengketa yang terjadi di masyarakat adat Kabupaten Biak Numfor. Namun, dengan disahkannya Undang-Undang Nomor 1 Tahun 2023 tentang KUHP dimana dalam memutuskan segala permasalahan tetap memperhatikan hukum yang hidup di masyarakat. Tentu hal tersebut akan menimbulkan tumpang tindih antara kedua system hukum tersebut sehingga memerlukan revitalisasi dan harmonisasi atas kedua hukum tersebut. Penelitian merupakan jenis penelitian empiris dengan menggunakan pendekatan pluralism hukum. Adapun dalam penelitian ini menggunakan snowball sampling dan purposive sampling dalam menjawab permasalahan yang diajukan. Hasil penelitian menunjukkan bahwa hukum adat dapat dilakukan harmonisasi dengan hukum positif namun dengan sedikit perubahan mengingat perbedaan antara kedua hukum tersebut.

Kata kunci: *revitalisasi, harmonisasi, hukum adat, restorative justice.*

1. INTRODUCTION

Indigenous disputes in Papua are an issue that continues to recur and cannot be separated from the socio-political, economic, and historical dynamics of the marginalization of indigenous peoples. Customary disputes in Papua often occur, especially over land rights, marriage, family honor, natural resource extraction and various other problems. This dispute stems from the historical and ongoing experience of relative deprivation among Papuans, who feel exploited and marginalized by the Indonesian government and international corporations that extract resources from their land.¹ The lack of legal recognition and protection of indigenous rights exacerbates this conflict, as Indonesia does not have comprehensive laws recognising the rights of indigenous peoples, which are found in Indonesia.² Although there are several laws that implicitly offend customary law, there are often differences in their implementation.

The indigenous people of Biak Numfor in resolving all forms of disputes or disputes often prefer customary law as the right choice in resolving them. This is considered by them to be more effective than positive law. The community thinks that the customary law system is much wiser in deciding all problems if there is a dispute between them. This wisdom can be seen from the justice, effectiveness and customary law that is much more in accordance with the local culture of the Biak people.³ However, there are problems that certainly arise so it is necessary to find an answer, where the government has passed Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the Criminal Code) where the law officially accommodates and includes customary law as a consideration in deciding a case.

In Article 2 Paragraph (1) which affirms the existence of a living and developing law in society when committing a criminal act even though the act is not regulated in this law. Of course, with the passage of Law Number 1 of 2023 which will come into effect in 2026, the Indonesian state will certainly face the challenge of implementing customary law recognition without clear operational guidance so that there is a *vacuum of guidance*. Although Indonesia has legal *pluralism*, of course, there is a great difference between positive law and customary law, both in imposing punishment, handling procedures, and judges' considerations in assessing whether someone is guilty or not.⁴ As in the indigenous people of Biak Numfor, in this case, some people use the *Kankain Karkara Byak* customary justice system (hereinafter referred to as KKB) in solving all problems which are of course very different from the positive legal system.

The Biak Numfor customary justice system (KKB) that has been used for generations is not just a dispute resolution mechanism, but contains a cosmological philosophy that upholds the restoration of harmony, both between humans and humans, as well as between humans and nature

¹ Rezya Agnesica Helena Sihalohe, Margaretha Hanita, and Cahyo Pamungkas, "Papua Conflict Resolution Challenges: The Linkage Of Relative Deprivation With The Spirit Of Separatism Of Indigenous Papuans," *Journal of Namibian Studies : History Politics Culture* 34 (June 19, 2023): 4429–53, <https://doi.org/10.59670/jns.v34i.2130>.

² Anifa Aprilia Sejati and Drajat Tri Kartono, "The Urgency of Recognizing the Rights of Indigenous Peoples in Asymmetric Decentralization in Papua and West Papua," *TRANSFORMASI: Journal of Government Management* 16, no. 1 (July 2024): 1–15, <https://doi.org/10.33701/jtp.v16i1.3449>.

³ Kasim Abdul Hamid, "The Choice of Customary Law in Dispute Resolution in the Land of Papua," *JlHK* 1, no. 1 (June 2016): 42–53, <https://doi.org/10.46924/jlHK.v1i1.14>.

⁴ Slamet Suhartono, "Problematic Positive Law Application and Theoretical Solutions," *DiH: Journal of Law* 15, no. 2 (2019): 372134.

and spirituality or called *restitutio in integrum* "restoration to its original condition". So that in this case, the imposition of the law is sufficient by paying fines without having to take the life of the perpetrator who has committed a mistake.

The emergence of Law Number 1 of 2023 concerning the Criminal Code will certainly bring a new paradigm in law in Indonesia. This is due to the differences in the legal justice system and there are differences in adjustment and implementation, so it is necessary to harmonize and revitalize these two laws.⁵ As stated in Article 2 paragraph (1) and Article 54 letter k as a form of government recognition of *living law* is one of the government's progressive steps in accommodating the value of law and justice in Indonesia. then in Article 54 letter k it is emphasized that the value of law and justice living in society is one of the factors that must be considered in criminalization. *restorative justice* in solving problems, which in this case also underwent a paradigm shift.⁶

The differences between the two legal systems certainly require harmonization and revitalization. This is because customary law is a law that is not codified or not booked. The mismatch of paradigm, approach, and implementation between customary law and positive law has the potential to hinder the integration of both in the national justice system. So in this case it requires harmonization between the two. Furthermore, practice in the field shows that law enforcement officials often prioritize positive law over customary law, so that the existence of customary law is often excluded even though it has been normatively recognized.⁷

This research raises the issue of revitalization and harmonization of customary law with the 2023 Criminal Code in order to harmonize and revitalize the two laws. This harmonization is expected to bridge the differences in characteristics between customary law and positive law, as well as create a legal system that is responsive, provides legal certainty, but still maintains local wisdom. This study specifically highlights the Biak Numfor customary dispute resolution system with two main focuses, namely: 1) what are the characteristics of Biak Numfor customary dispute resolution? 2) What is the effective harmonization model between the Biak Numfor customary dispute resolution system and the Indonesian criminal justice system in accordance with Law No. 1 of 2023?

2. RESEARCH METHODOLOGY

The type of research used in the research is the type of empirical research. The approach used to answer the problem is to use a *legal pluralism*⁸ approach. The pluralism approach is one of the approaches used in the type of empirical legal research with a focus on *socio-legal* studies where in this study focuses on the *revitalization* and *harmonization* of customary disputes that occurred in Biak Numfor against the criminal justice system in Indonesia, especially against Law No. 1 of 2023

⁵ Yanuriansyah Arrasyid and Muslim Lobubun, *Introduction to Indonesian Law: Foundations and Basic Concepts* (Biak Numfor: Kyadiren Foundation, 2023), <https://doi.org/10.46924/pyk.15>.

⁶ Muhammad Fahleby, Muklis Al'anam, and Dwi Rahman Suhada, "New Paradigm of Restorative Justice Based on the Perspective of Customary Law in Law No. 1 Year 2023 on the Criminal Code," *Vonis* 1, no. 1 (2025): 46–53.

⁷ Pupu Sriwulan Sumaya, "Conflict between Customary Law and State Law: The Challenge of Enforcing Justice in Indigenous Peoples," *Manifesto Journal of Communication, Politics, and Cultural Ideas* 3, no. 2 (2025): 1–12.

⁸ Irwansyah, *Legal Research: Choice of Methods & Practices for Writing Articles*, 4th ed. (Yogyakarta: Mirra Buana Media, 2021).

concerning the Criminal Code. Sample and data sources using *purposive sampling* and *snowball sampling*.⁹ The data collection technique carried out is through interviews, observations and documentation. Data analysis can use triangulation based on a number of data that has been obtained.¹⁰ This study also uses *Focus Group Discussion* (FGD) in analyzing the available data.

3. RESULTS AND DISCUSSION

3.1. Characteristics of Biak Numfor Customary Dispute Resolution

Biak Numfor Regency is one of the islands located in Papua Province, precisely in Cenderawasih Bay, with geographical coordinates of 0°21' - 1°31' South Latitude (LS) and 134°47' - 136°48' East Longitude (BT). This area includes Biak Island, Numfor Island, and more than 42 other small islands, with the northern boundary of the Pacific Ocean, the south of the Yapen Strait, the west of Supiori Regency, and the east of the Pacific Ocean.¹¹ The Biak Numfor people live in a social order thick with kinship ties, where *patrilineal* lineages provide an important position for men in social and customary life. Such a society structure makes the values of solidarity, togetherness, and harmony the main foundation in regulating relationships between individuals and between groups.

In daily practice, the people of Biak Numfor still make customary law the main choice in resolving disputes. Customary law is seen as more close, better understands the socio-cultural context, and is better able to restore the relationship that has been fractured due to conflicts that have occurred than formal state law which is considered distant, bureaucratic, and often does not touch the root of the problem. Therefore, when disputes arise "whether related to land, property, marriage, or other violations" the community prioritizes settlement through customary mechanisms before bringing the issue to the realm of formal justice.

The indigenous people of Biak Numfor are familiar with the customary justice system called "*Kankain Karkara Byak*" or commonly known as the KKB. KKB is a customary institution or organizational system of indigenous peoples of the Byak tribe where this institution has the main task and function as a forum for deliberation and resolution of customary, social, civil and criminal law problems. In addition, this institution also functions to regulate people's lives in a sustainable manner.¹² *Kankain Karkara Byak* is a customary institution and settlement mechanism that has been passed down from generation to generation from the previous generation to the next generation. This institution is not only an ordinary forum in solving problems but is a social institution that binds the community based on customary and spiritual legitimacy.

The existence of *Kankain Karkara Byak* has strong legal legitimacy, as stipulated in Law Number 21 of 2001 concerning Special Autonomy for Papua Province as amended by Special

⁹ Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).

¹⁰ Derita Prapti Rahayu, M SH, and Session Ke, "Legal Research Methods," *Yogyakarta: Thafa Media*, 2020.

¹¹ The Regional Government of Biak Numfor Regency, "Biak Numfor Regency Geographical Conditions," 2022, [https://www.papua.go.id/view-detail-page-278/undefined#:~:text=Biak Numfor is one of the westernmost bordering Supiori Regency.&text=Tourism industry](https://www.papua.go.id/view-detail-page-278/undefined#:~:text=Biak%20Numfor%20is%20one%20of%20the%20westernmost%20bordering%20Supiori%20Regency.&text=Tourism%20industry).

¹² Yan Dirk Wabiser, *Kankain Karkara Kearifan Lokal Orang Biak*, ed. Rismawati, 1st ed. (Bandung: CV. Widina Media Utama, 2022), <https://repository.penerbitwidina.com/publications/558129/kankain-karkara-kearifan-lokal-orang-biak>.

Autonomy Law Number 2 of 2021¹³ which provides special autonomy to Papua Province to carry out government based on customs that are in line with the 1945 Constitution. This is also strengthened by the Papua Provincial Regulation Number 20 of 2008 concerning Customary Justice, in addition, in the 1945 Constitution in Article 18B Paragraph (2) states that the government declares to respect and recognize the traditional rights of indigenous peoples as long as it does not conflict with the principles of the Unitary State of the Republic of Indonesia.¹⁴ However, before resolving through the subbar (KKB), there is a process that must be carried out so that there is an integrated judicial system.

a) **Dispute Resolution Procedure for the Indigenous People of Biak Numfor**

The Biak Numfor Islands divide the Bar or region to solve the problems that occur in each region. The division of the territory is based on the boundaries that have been set by each customary court. The area in question is divided into nine (9) bars, including 1) Self Pore Bar, 2) KBS Sorido Bar, 3) Barmani, 4) Swandiwe Bar, 5) Napa Bar, 6) Oridek Bar, 7) Manobo Bar, 8) Supiori Bar and 9) Numfor Bar.¹⁵ Each of these regions has different legal provisions in deciding all the problems handled. However, in this case, the handling of each case is certainly handled within the family. So that the settlement of customary disputes in Biak Numfor takes place through a multi-level mechanism before being submitted to the *Kankain Karkara Byak Institute*.

The settlement procedure of each bar (region) is led by a local traditional leader or mananwir who has social legitimacy and a respectable position based on the provisions of the community that has been determined. When a dispute occurs, the parties are usually first summoned by the indigenous leader at their regional bar for mediation. This process places great emphasis on deliberation (*wawarbond*), and peaceful settlement, involving customary witnesses and local community leaders.

Based on the results of field interviews that have been conducted, the settlement of customary disputes in Biak Numfor is carried out through a multi-level mechanism that starts from the smallest scope (family) through mananwir Er (clan) then to mananwir Mnu (village) before being brought to the highest customary institution (*Kankain Karkara Byak*). This multi-level system shows the philosophy that problem solving must be sought first at the lowest level and close (kinship) with the disputing party, so that social harmony is not easily disturbed.¹⁶

a) Settlement at the Family/Keret Level (*Mananwir Er*)

The first stage of dispute resolution is carried out at the lowest level or keret or clan, led by Mananwir Er. At this stage, the problem is sought to be resolved within the scope of the extended family by involving parties who still have direct kinship relationships. The main function of Mananwir Er is as a family mediator to prevent conflicts from developing further and maintain the

¹³ DPR, "Law No. 2 of 2021 concerning Special Autonomy for Papua Province," *Law No. 2 of 2021*, no. 1 (2021): 1–40, <https://jdih.setkab.go.id/>.

¹⁴ The Constitutional Court, *The Basis of Juridical Considerations on the Legal Framework of Customary Law Unity in the Process of Testing Laws at the Constitutional Court* (Center for Research and Studies of the Clerkship and Secretariat General of the Constitutional Court of the Republic of Indonesia, 2011).

¹⁵ Martinus Swabra, "Mananwir Mnu Interview" (2025).

¹⁶ Soleman Aibekob, "Mananwir Er (Keret) Interview" (2025).

honor of the clan. Deliberation is usually carried out in a place that has been provided or the house of one of the family members. This mechanism is relatively informal, but it has a strong moral weight because it is supported by blood ties and the obligation to maintain the good name of the family. If the deliberation is successful, the dispute does not need to be forwarded to a higher level. This is done with the intention and purpose of upholding the norms in the indigenous people of Biak, namely *ainemo* (deliberation), *mando* (respect), *sarira* (togetherness), and *srawa* (peace).¹⁷

b) Settlement at the Village Level (Mananwir Mnu)

In contrast to mananwir mnu, mananwir mnu or called village mananwir is a mananwir that acts to solve at the village level if the mananwir Er or clan cannot solve it at the family level. Mananwir Mnu has wider authority than Mananwir Er, because it involves all residents of the village or a larger community. At this stage, the dispute resolution process is carried out through village deliberations that present community leaders, traditional elders, and witnesses.

Decisions at the village level are usually more formal, with stricter customary sanctions. In addition to material compensation, decisions can include certain social obligations, customary rituals, or remedial measures to maintain harmony between villagers. All bars or areas in Saireri Bay or Biak Numfor Regency carry out the above procedures. So that there are similarities in each law that applies in Biak Numfor.

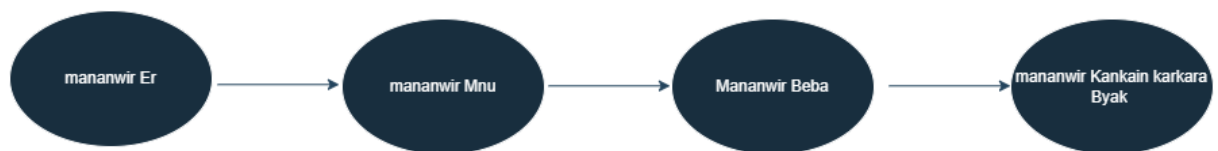


Figure 1 Stages of Problem Solving in Biak Customary Law

Any disputes or problems that exist in indigenous peoples are first submitted to the mananwir level to reduce and resolve internally.¹⁸ This is in line with the main norms that are still held by the people of Biak Numfor in resolving conflicts, among others:¹⁹

- a. *Sron*: emotional and social recovery mechanisms through traditional symbols such as eating together or exchanging goods in the form of betel nut and hanging plates.
- b. *Yomna*: Norms that encourage confession of error and repentance as part of the reconciliation process.

¹⁷ Brian Krar, "The Role of the Karkara Byak Kankain Institution in Resolving Inter-Group Conflicts in Biak Numfor Regency, Papua," *IPDN Journal*, 2025, 1–18.

¹⁸ Deki Demianus Korwa, "The Authority of Karkara Byak Kankain in Resolving Customary Delik Matters," *Jihk* 4, no. 1 (2022): 1–10, <https://doi.org/10.46924/jihk.v4i1.162>.

¹⁹ Krar, "Peranan Lembaga Kankain Karkara Byak Dalam Penyelesaian Konflik Antar Kelompok Di Kabupaten Biak Numfor Papua."

- c. *Wampasi*: The mechanism of customary deliberation which becomes a decision-making forum through the consensus of the elders.
- d. *Sasibim mambri*: Principles of peaceful living that emphasize the importance of mutual respect and avoidance of violence.

3.2. An effective harmonization model between the Biak Numfor customary dispute settlement system and the Indonesian criminal justice system in accordance with Law No. 1 of 2023

Through Law Number 1 of 2023 concerning the Criminal Code, it is a legal reform and an important milestone in law in Indonesia. Although it will come into effect in 2026 and introduce a number of recent progressive provisions, one of which is the recognition of the law that lives in the community (*living law*), of course there are obstacles in its application where most customary law values are not codified so that it requires harmonization and revitalization of customary law aforementioned. As contained in Article 2 paragraph (1) which states that the laws that develop in society can be used as a basis for punishment, as well as Article 54 letter k which stipulates that the values of law and justice that live in society must be considered in imposing crimes.²⁰

Of course, the rules that have been enacted require a harmonized model due to urgent needs. Many problems overlap between customary law and state law.²¹ For example, it will certainly cause an overlap of authority and even a jurisdictional conflict between customary law and positive law.²² For example, in handling customary land disputes, fights between groups, or cases of domestic violence which in this case should be resolved first through the family level or *mananwir* Er and continued to the *mananwir* Mnu level, however, the same case can be processed by law enforcement officials through formal channels because it is considered to be related to the public interest or touches general criminal articles. So from the description above, it will certainly cause legal uncertainty or even lead to the re-criminalization of parties that have actually been resolved customarily.

Customary law is oriented towards communal values, social harmony, and restorative justice. Sanctions in customary law are often in the form of the restoration of social relations, customary rituals, or symbolic compensation that is not merely material.²³ In contrast to positive law, which in this case emphasizes more on formal sanctions, retributive justice and legal certainty. Of course, after the enactment of the new Criminal Code, there is a new paradigm that will cause confusion in the application of sanctions, especially when the same case is handled by both customary courts and state courts.

Based on interviews that have been conducted by *mananwir* beba or customary judges in the *souþ bar of Kankain Karkara Byak* Junus Komnisba, explained that customary

²⁰ DPR, "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," 2023.

²¹ Benhur Raubert Putirulan, Kristi Warista Simanjuntak, and Paul Przemysław Polański, "Settlement of the Malamoi Community Customary Land Dispute in Sorong Regency: A Review of Legal and Social Aspects," *Journal of Law Justice (JLJ)* 2, no. 2 (June 10, 2024): 107–21, <https://doi.org/10.33506/jlj.v2i2.3344>.

²² Sartika Intaning Pradhani, "Approach to Legal Pluralism in the Study of Customary Law: The Interaction of Customary Law with National and International Law," *Law: Journal of Law* 4, no. 1 (2021): 81–124, <https://doi.org/10.22437/ujh.4.1.81-124>.

²³ Gina Maulida, "Correlation of Customary Law and Restorative Justice: Building Local Wisdom Based Justice in Indonesia," *Pikukub: Journal of Local Law and Wisdom* 2, no. 1 (2025): 18–26.

law and positive law can be harmonized but cannot be fully done considering that there is a difference between positive law and customary law. This can be seen from the imposition of punishments and sanctions applied to the decisions that have been made by the mananwir. But on the contrary, the implementation of Law No. 1 of 2023 concerning the Criminal Code is a good recognition of customary law.

Based on the data that has been collected by researchers, at least 3 models of harmonization between state law and customary law must be considered. The harmonization model is normative harmonization, institutional harmonization, procedural harmonization (technical).

3.2.1. Normative harmonization

Customary law must run in harmony with the 1945 Constitution and Pancasila, so it must pay attention to written or codified laws. The regulation that regulates in this case is Law Number 1 of 2023 concerning the Criminal Code which has given space to customary law as explained in Article 2 paragraph (1) which states the recognition of the law that lives in the community and Article 54 letter k where judges are obliged to pay attention to the values and justice that live in the community.

So that through the legal norms in question (Law No. 1 of 2023), customary norms can be used as a basis for juridical considerations in imposing a decision. However, again in the implementation, in this case before the process in state law is carried out,²⁴ it is necessary to negotiate with the mananwir in order to know the problems that occur in the custom. In addition, of course, there are obstacles in the mechanism where it is still necessary to identify which customary norms can be recognized and to what extent they can be used as a basis for decision-making.

a. Institutional harmonization

Institutional speaking, of course, there are regulations and legal arrangements that regulate related to the main duties and functions of the related institutions. as the Kankain Karkara Byak Institution as an institution that processes, decides, and resolves both civil and criminal problems, conflicts, disputes and family problems through deliberation by determining a number of fines to be paid. However, if harmonization is to be carried out, of course, a number of bars (areas) in Biak Numfor need to coordinate with the district court, the police and the prosecutor's office. It is a matter of keeping in mind so that there is no overlap of rules and there is recognition and building good communication through this coordination.

If a dispute occurs at the family level, it is first resolved at the family level before being taken to the police. However, if the case has a wide impact and concerns serious criminal offenses such as murder or narcotics, then the decision from the results that has been made by mananwir can be reported through formal institutions as a consideration and as a form of *restorative justice* that is still held by indigenous peoples.

b. Technical harmonization (procedure)

The procedure or flow of case handling is certainly very important in handling the problem being handled. Considering that these two institutions are very different.

²⁴ Mr. Sulastriyono and Sandra Dini Febri Aristya, "The Application of Norms and Principles of Customary Law in Civil Justice Practice," *OLD WEBSITE OF JURNAL MIMBAR HUKUM* 24, no. 1 (2012): 25–40.

Starting from the initial stage, the completion was carried out at the level of mananwir er (clan), mananwir Mnu (village) and mananwir beba (soup bar). From the decision, it is then made in the form of customary minutes that can then be used as evidence in the district court as a basis for considering the settlement of the problem.

If the case handled in this case can be resolved sufficiently at the customary level, then the police do not need to go down in handling the case. However, they still pay attention to the procedures and recovery carried out by indigenous peoples. In addition, checks *and balances* are needed to balance and examine a number of cases that are being handled by indigenous peoples so that they still uphold justice, certainty and legal benefits.

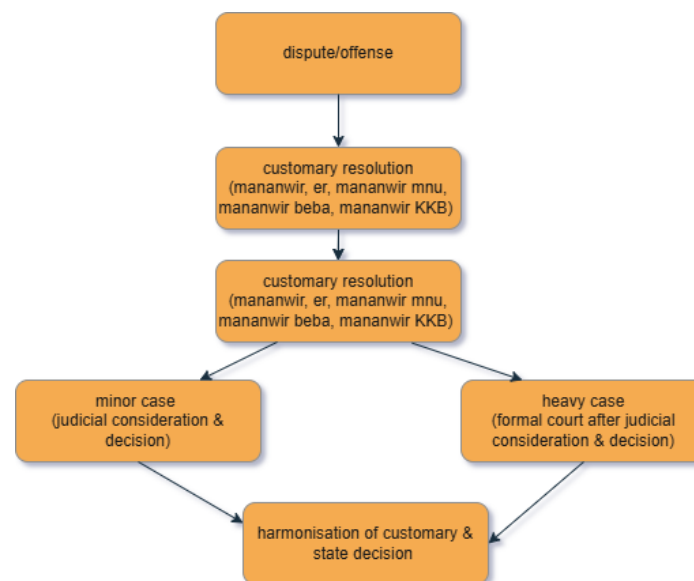


Figure 2 Revitalisation and harmonisation between customary law and positive law

4. CONCLUSION

Harmonization is an integrated alignment process between customary law and positive law, especially after the enactment of Law Number 1 of 2023 concerning the Criminal Code. As done by the people of Biak Numfor in resolving disputes, it is still through the multi-storey Karkara Byak Kankain by holding the *restorative-cosmological* principles and *restitutio in integrum* to restore the situation back to its original state. Normatively, customary law can be used as a basis for consideration in deciding and resolving offenses as contained in the 2023 Criminal Code. However, of course, it requires coordination between relevant institutions so that it can be carried out optimally. Procedurally, customary decisions need to be documented in the form of minutes so that they can be used as evidence and consideration in formal courts.

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