

Comparison Of Sanctions For The Crime Of Adultery In Toraja Customary Law And National Law In Indonesia

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Abstract This research aims to analyze the comparison of sanctions for the crime of adultery in the context of Toraja customary law and national law in Indonesia. Adultery is a violation of social norms that has legal implications, but handling can differ between customary law and national law. The research method used is a descriptive-analytical approach by collecting data from primary and secondary sources. The research results show that in Toraja customary law, sanctions for the crime of adultery tend to be restorative in nature and involve customary deliberation to achieve reconciliation between the parties concerned. On the other hand, national law in Indonesia regulates sanctions for the crime of adultery through criminal law instruments with the potential for a prison sentence. This comparison provides an in-depth understanding of the differences in approaches between customary law and national law in dealing with the crime of adultery. The implications include the need for harmonization or synchronization between customary law and national law to ensure justice and sustainability of legal norms in society. This research can be the basis for improving legal regulations that are more inclusive and in line with local values and community needs.

Keywords: Comparative Law, Crime of Adultery, Toraja Customary Law

Abstrak Penelitian ini bertujuan untuk menganalisis perbandingan sanksi tindak pidana perzinahan dalam konteks hukum adat Toraja dan hukum nasional di Indonesia. Perzinahan merupakan pelanggaran norma sosial yang mempunyai implikasi hukum, namun penanganannya dapat berbeda antara hukum adat dan hukum nasional. Metode penelitian yang digunakan adalah pendekatan deskriptif-analitis dengan pengumpulan data dari sumber primer dan sekunder. Hasil penelitian menunjukkan bahwa dalam hukum adat Toraja, sanksi terhadap tindak pidana perzinahan cenderung bersifat restoratif dan melibatkan musyawarah adat untuk mencapai perdamaian di antara pihak-pihak yang bersangkutan. Di sisi lain, hukum nasional di Indonesia mengatur sanksi terhadap tindak pidana perzinahan melalui instrumen hukum pidana yang berpotensi hukuman penjara. Perbandingan ini memberikan pemahaman mendalam mengenai perbedaan pendekatan antara hukum adat dan hukum nasional dalam menangani tindak pidana perzinahan. Implikasinya antara lain perlunya harmonisasi atau sinkronisasi antara hukum adat dan hukum nasional untuk menjamin keadilan dan keberlangsungan norma hukum dalam masyarakat. Penelitian ini dapat menjadi landasan untuk menyempurnakan peraturan hukum yang lebih inklusif dan sejalan dengan nilai-nilai lokal dan kebutuhan masyarakat.

Kata Kunci : Perbandingan Hukum, Tindak Pidana Zina, Hukum Adat Toraja

INTRODUCTION

Indigenous communities are residents that live based on their ancestral origins from generation to generation in a traditional area that has sovereignty over land and natural resources, socio-cultural life that is regulated by customary ordinance, and traditional institutions that manage the survival of the community. (Ubbe, 2015) Indigenous communities are one of the substances that is the focus of customary law. Customary law is a legal system recognized in the legal order in Indonesia.

In realizing the ideals of national legal development, the establishment of a national legal system within the framework of the Unitary State of the Republic of Indonesia (NKRI) which is just, consistent, and does not execute discrimination, cannot be separated from community action in complying with all applicable legal regulations (*ius constitutum*). In

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realizing the national legal system, will be directly influenced by the traditional culture that lives and is enforced in society. (Soesilo, 2015)

Customary law in Indonesia has properties and characteristics that are different from other laws. Customary law has a more pragmatic-realism nature, which can be interpreted as customary ordinance having the ability to fulfill the needs of society which has a religious functional nature so that traditional statute fulfills a social function or social justice. (Pide, 2014) Article 18 of the 1945 Constitution states that the government recognizes and respects regional government units that have special or unique characteristics as defined by law. The government also recognizes and respects indigenous community units and their traditional rights, as long as they are still in existence and subject to rules defined by law by societal developments. (Prodjodikoro, 2019)

With the diversity of laws that exist in Indonesia, there are still many regions that adhere to their customs, one of which is the Toraja tribe. Aluk to dolo is the basis of the beliefs or rules of behavior of the Toraja traditional community, where aluk is a belief or rule of behavior, to is human, and dolo is first. Aluk todolo is the source of 2 (two) main teachings, namely aluk sanda pitunne because it has 7777 prohibitions which carry out the maintenance of a way of life that is believed to bring peace, and aluk sanda saatu which is a rule with several 100.

In aluk todolo, several laws must be obeyed by adherents called email, including:

1. Pemali ullutu panda is perforated, meaning it is not allowed to disturb the burial ceremony of the dead.
2. Fornication of food is not permissible to commit adultery.
3. If you don't mess up the order of the pegs, don't mess up in the market
4. Pemali unteka' palanduan, slave groups were prohibited from marrying tomakaka and tokapua (nobles).
5. Pemali massape-ao', you cannot leave the house on the same day in different directions.
6. Pemali boko, you are not allowed to steal.
7. Pemali umboko sunga' na pedanta tolino, do not kill fellow humans.
8. Pemali ma' kada penduan, you must not lie.
9. Pemali unkasirisan deata misanta, do not betray your parents.
10. Pemali ungkattai bubun, don't defecate in the well.
11. Pemali umbala' bala' tomanglaa, don't torture the shepherd boy.
12. Pemali meloko, is prohibited from taking other people's belongings.
13. Pemali umbala-bala' patuoan, do not torture livestock.

Toraja customary law also regulates acts that are categorized as criminal acts of morality, such as adultery where one of them is married (ma' pangan buni), adultery where both are not yet married (Mepare manggura), exposing one's private parts in front of the public (ma'bembe tille). Toraja Customary Law, which regulates criminal acts of decency as mentioned above, is not in written form, but it has lived in society and continues to be fostered by traditional advice and preserved by the Toraja Traditional Institution by way of narrative. Morality crimes or immoral offenses in Toraja Customary Law do not yet know the elements of immoral acts that can be categorized as criminal acts based on customary law. Therefore, in the process of law enforcement, immoral acts committed by Toraja indigenous people are always faced with two laws, namely customary law and Article 281 of the Criminal Code which also regulates moral offenses. So, in Toraja customary law regarding the crime of adultery, the elements of the crime are not yet clear, and how the enforcement or resolution process is by Toraja customary law and the Criminal Code regarding the crime of adultery.

METHODOLOGY

The research employed an empirical juridical research method to gather data and information directly from the community. It adopted a statutory regulation approach to analyze the applicable legal framework, as well as a case approach to examine legal implementation in a real context. The research focused on comparing the sanctions for the crime of adultery in Toraja Customary Law and National Law in Indonesia. The study was titled "Comparison of Sanctions for the Crime of Adultery in Toraja Customary Law and National Law in Indonesia" and aimed to gain a comprehensive understanding of the similarities and differences in the punishment for the crime of adultery in the two legal systems.

RESULTS AND DISCUSSION

Concept of Crime of Morality and Crime of Adultery

The term decency in the Big Indonesian Dictionary is stated as something that contains morality which means good manners, civilized, polite, and courteous. Good customs, manners, politeness, conditions, and also knowledge related to customs. In English, the term moral means moral. The word decency has a definition of good manners, good manners, civility, customs, and order. From society's perspective, decency is an action that is right or wrong, especially in matters relating to sexual acts. (Marpaung, 2016)

The law views decency as behavior, actions, conversations, and even anything that must be protected by law related to the norms of decency to realize morals and order in the

social life of society. In general, a crime of decency is defined as a crime related to (problem) of decency (ethics). This statement shows that determining the boundaries or understanding of decency is not simple. The boundaries of decency depend on the values that apply in a society. (Arief, 2018)

In Sudrajat Basar's view, decency is a good custom in relationships between various members of society, specifically regarding human genitals (sex). Meanwhile, politeness is generally about good habits. (Bassar, 2016) Morality offenses are offenses related to (issues of) morality. However, it is not easy to determine the boundaries or scope of moral offenses, because the meaning and boundaries of "decency" are quite broad and vary according to the views and values that prevail in society. Moreover, the law itself is essentially a minimum of moral values (*das recht das ethische minimum*). (Djamali, 2020)

In Articles 281-303 of the Criminal Code which includes the following actions:

1. Violating decency in public (Article 281);
2. Broadcasting, showing, making, offering, etc., writings, pictures, and objects that violate decency (pornographic in nature) (Article 282-283);
3. Committing adultery, rape, and other things related to committing or connecting or facilitating obscene acts and sexual relations (Articles 284-296);
4. Trafficking in women and underage boys (Article 297);
5. Those related to treatment to abort pregnancy (Article 299);
6. Those related to intoxicating drinks (Article 300);
7. Handing over children to beggars and so on (Article 301);
8. Animal abuse (Article 302);
9. Gambling (Article 303).

Articles 532-547 of the Criminal Code which includes violations of morality:

1. Revealing or showing something pornographic in nature (Articles 532-533);
2. Those related to drunkenness and heavy drinking (Articles 535-539);
3. Those related to the immoral treatment of animals (Articles 540, 541, and 544);
4. Predicting fate and/or dreams (Article 546);
5. Selling and so on amulets, objects with supernatural powers, or giving lessons in supernatural powers (Article 546);
6. Using amulets as witnesses in court (Article 457)

Zina comes from the Arabic word *zanah*, which means sexual intercourse between a man and a woman who are not bound by marriage. Zina means a heinous act. The definition of the term adultery is sexual relations between a man and a woman who are not bound by a

marriage relationship. (Ishak, 2014) Specifically regarding the offense of adultery, it is regulated in Article 284 where the Criminal Code stipulates that sexual relations outside of marriage are only a crime if the perpetrator or one of the perpetrators is a person who is married. If the act is carried out by two people who are not yet married, then according to the Criminal Code they cannot be said to have committed the crime of adultery. The Criminal Code also stipulates that the offense of adultery is included in one of the absolute offenses of the complaint. This means that even if adultery has occurred as regulated in Article 284 of the Criminal Code, the perpetrator cannot be criminally prosecuted if there is no complaint from the husband or wife who was harmed.

The concepts of crimes of decency and crimes of adultery are two areas of criminal law that are related to moral and ethical norms in society. Morality crimes include behavior that is considered to violate moral norms or public decency, often related to social and cultural aspects. It includes violations of norms such as public order, moral sustainability, and social justice. On the other hand, the crime of adultery focuses on violations of marital relations or sexual relations outside of marriage. Adultery is often considered an act that violates certain moral and religious norms. Criminal laws related to adultery vary across jurisdictions, and legal sanctions may also differ. (Ilyas, 2014)

Both offenses of decency and crimes of adultery reflect society's efforts to maintain moral and ethical values that are considered important in a culture or religion. However, the implementation and enforcement of laws related to these two concepts can give rise to debates regarding human rights, privacy, and tolerance in an increasingly multicultural society. It is critical to consider cultural, religious, and human rights contexts in formulating and implementing laws related to crimes of decency and adultery. (Widnyana, 2014)

Application of Toraja Customary Law

The Toraja community resides in the northern mountains of South Sulawesi, located in Indonesia. Their population is approximately 650,000, with 450,000 people still residing in Tana Toraja Regency and North Toraja Regency. Most of the Toraja tribe practices Christianity, while others follow Islam and a belief system called *aluk to dolo*. Interestingly, the Toraja tribe was named by lowland inhabitants to address the highlanders. Historically, the tribe had more trade relations with outsiders such as the Bugis, Makassar, and Mandar tribes living in the lowlands of Sulawesi than with fellow tribes in the highlands. The advent of Dutch missionaries in the Toraja highlands triggered the emergence of Toraja ethnic consciousness in the Sa'dan Toraja region, and this shared identity grew with the rise of tourism in Tana Toraja. Today, South Sulawesi is home to four primary ethnic groups, namely the Bugis tribe

(the majority, including shipbuilders and sailors), the Makassar tribe (traders and sailors), the Mandar tribe (traders and fishermen), and the Toraja tribe, who are farmers in the highlands. (Labuhari, 2017)

Many Toraja people still adhere to an ancestral belief called Aluk Todolo. The term comes from the words aluk which means religion/rules and todolo which means ancestors. So AlukTodolo means religion/rules from the ancestors. However, before the descent of Aluk Todolo, there were already norms handed down by Puang Matua through Datu Laukku' which applied to his descendants, but because of a major violation that caused the direct relationship between humans and Puang Matua (God) to be broken. Next, Pong Suloara' and Pong Buauran organized the norms that had been violated, using the ma' rebongan didi ritual method (asking Puang Matua for guidance) so that they were directed to reorganize the violated norms into Aluk Sanda Pitunna (Aluk Todolo).

In Toraja history, the first village was called Puang Lembang or Bamba Puang (Bamba = base/center/place, Puang = owner). Then with the rank they have, the Toraja tribe organizes society and how it is governed. From Puang Lembang they then spread to other areas and became the rulers of the areas they occupied, and became the Puang of the areas they controlled. This is the forerunner of the Tana Toraja customary law community, namely an orderly community group, settled in a certain area, that has its power, and has its wealth in the form of visible and invisible objects, which then forms a customary law association as a legal community that shows the meanings of human units that have an orderly structure, a fixed territory, rulers or administrators, and wealth.

In its development to date, the Toraja tribe has several very basic aspects, namely:

1. Live in groups in a community called lembang;
2. There is a leader or elder (to parengnge');
3. The value of democracy through groups is the highest power (untesse batu mapipang).

Comparison of Legal Sanctions for the Crime of Adultery in Toraja Customary Law and National Criminal Law

Toraja customary law is a variety of movements regarding the behavior of the Toraja people. There are customary laws in Toraja that regulate the adoption of children, distribution of inheritance to children adopted by the nobility, customary laws regarding land, customary laws regarding marriage and there are many more customary laws that exist in Toraja. In the institutional structure of Tanah Toraja, they live in one community that regulates their lives. It is a neighborhood that adheres to customary law within itself because if there is a dispute between residents, the Tongkonan or To Parengge is obliged and responsible for resolving the

problem through a traditional peace session held in Tongkonan. In the Tongkonan traditional community, some leaders or elders are considered democratic through the Kombongan which is the highest authority. (Poespasari, 2019)

Before embracing Christianity and Islam, the Toraja people adhered to a belief system called Aluk Todolo, namely an old religion that centered on three aspects. The first is the worship of a creator figure called Puang Matua, the second is the worship of Deata-Deata (maintenance deity), and the third is the worship of the spirits of ancestors called Tomebali Puang, who are considered to give blessings and protection to their descendants. The old religious system was mainly manifested in their concept of death and the ceremonies surrounding death. The death ceremony is a sacred moment, generally, the death ceremony is executed with all efforts, to be a tribute, sometimes the sacrifice in terms of material in carrying out the ceremony exceeds other traditional ceremonies such as marriages and other ceremonies. (Mody, 2016)

Every traditional ruler in various regions in Toraja certainly has a role that is very influential in the balance of society itself, one of which is the role of traditional rulers in providing customary sanctions against people who commit conventional violations that are considered to disrupt order and harm the surrounding indigenous communities. As stated in North Toraja Regency Regional Regulation Number 1 of 2019 concerning Recognition and Protection of the Rights of Traditional Law Communities, Article 1 Paragraph 23 reads: "The Customary Court is an institution established to resolve disputes between members of customary law communities and disputes that occur within their ancestral territory, with outside parties/other parties." The customary sanctions that have been given to people who violate customary regulations are that the perpetrator of the customary violation is punished by offering a pig or buffalo which will be speared together with the local customary community, and then the meat is cooked to be eaten together. For the traditional Toraja people, pigs and buffalo are seen as sacred animals and have religious magical powers. Apart from offering pigs, previously the customary sanction that could be given to perpetrators of theft was to parade the perpetrators to a crowded place with their hands tied and shouted by the indigenous people along the road.

Toraja customary law, which is the traditional legal system of the Toraja people in South Sulawesi, has a unique approach to sanctions for the crime of adultery when compared with Indonesia's national criminal law. In the context of Toraja customary law, adultery is considered a serious violation of social and cultural norms that are upheld by the local community. The punishment given is usually restorative in nature and involves traditional

processes, such as an apology ceremony or a reconciliation process between the parties involved. (Suarta, 2015)

Meanwhile, Indonesia's national criminal law regulates adultery within the framework of positive criminal law that applies throughout the country. Article 284 of the Criminal Code regulates adultery and threatens the perpetrator with imprisonment. The striking difference between Toraja customary law and national criminal law lies in the approach to punishment and the case resolution process. National criminal law tends to be more formal and adopts a system of prison sentences as a deterrent, while Toraja customary law focuses on restoring social relations and harmony in local communities.. (Syahbandir, 2018)

However, it needs to be acknowledged that with the times and interactions between cultures, collaboration or conflict often occurs between customary law and national criminal law. Toraja society may experience challenges in maintaining its traditional values along with the influence of globalization and modernization. Therefore, this comparison reflects the complex dynamics between local wisdom and national legal norms in dealing with the crime of adultery in Indonesia.

CONCLUSION

Indigenous peoples, as represented by the Toraja tribe, have a customary legal system that lives and develops along with the values and beliefs of their ancestors. This customary law includes rules that regulate various aspects of life, including traditional ceremonies, social relations, and social justice. Toraja customary law also includes prohibitions or prohibitions that must be obeyed by its members. In the context of national legal development in Indonesia, legal diversity, including customary law, is an integral part of realizing a national legal system that is fair and non-discriminatory. Recognition and respect for indigenous peoples, including the Toraja tribe, is recognized in the constitution, as regulated in Article 18 of the 1945 Constitution. However, a comparison between Toraja customary law and national criminal law shows differences in handling the crime of adultery. Toraja customary law provides sanctions in the form of traditional ceremonies and sacrificing sacred animals, while national criminal law has provisions governing adultery and its criminal sanctions. Law enforcement faces complex challenges when dealing with cases of adultery in indigenous communities because customary law and national criminal law need to be taken into account simultaneously. Achieving a balance between cultural and religious values and national legal principles requires a deep understanding of the issue.

REFERENCES

- Arief, B. N. (2018). *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana.
- Bassar, M. S. (2016). *Tindak-Tindak Pidana Tertentu di dalam KUHP*. Bandung: Remadja Cipta.
- Djamali, R. A. (2020). *Pengantar Hukum Edisi Revisi*. Jakarta: Rajawali Pers.
- Ilyas, A. (2014). *Asas-asas Hukum Pidana Memahami Tindak Pidana dan Pertanggungjawaban Pidana sebagai Syarat Pemidanaan (Disertai Teori-teori Pengantar dan Beberapa Komentar)*. Yogyakarta: Rangkang Education Yogyakarta dan PIKAP-Indonesia.
- Ishak. (2014). , Analisis Hukum Islam Tentang Perbuatan Zina dalam Pasal 284 Kitab Undang-Undang Hukum Pidana dalam Pembaharuan Hukum Pidana. *Kanun Jurnal Ilmu Hukum*, 165-178.
- Labuhari, T. M. (2017). *Budaya Toraja*. Jakarta: Yayasan Maraya.
- Marpaung, L. (2016). *Kejahatan Terhadap Kesusilaan dan Masalah Preverensinya*. Jakarta: Sinar Grafika.
- Mody, R. (2016). Tinjauan Hukum Terhadap Lembang Sebagai Desa Adat Di Tana Toraja Menurut Undang-Undang No.6 Tahun 2014 Tentang Desa dan Pelaksanaannya. *Fakultas Hukum Universitas Hasanuddin*, 96.
- Pide, A. S. (2014). *Hukum Adat*. Jakarta: Kencana.
- Poespasari, E. D. (2019). *Hukum Adat Suku Toraja*. Surabaya: Jakad Publishing.
- Prodjodikoro, W. (2019). *Asas-asas Hukum Pidana di Indonesia*. Bandung: Refika Aditama.
- Soesilo, R. (2015). *Kitab Undang-Undang Hukum Pidana (KUHP) Serta KomentarKomentarnya Lengkap Pasal Demi Pasal*. Bogor: Politeia.
- Suarta, D. M. (2015). *Hukum dan Saksi Adat*. Malang: Setara Press.
- Syahbandir, M. (2018). Kedudukan Hukum Adat Dalam Sistem Hukum. *Jurnal Kanun*, 3.
- Ubbe, A. (2015). *Laporan Akhir Penelitian Tentang Perkembangan Hukum Adat di Provinsi Sulawesi Selatan*. Jakarta: Badan Pembinaan Hukum Nasional.
- Widnyana, I. M. (2014). *Kapita Salekta Hukum Pidana Adat*. Bandung: Eresco.