

The Implementation of Customary Crimes in the Case of Running Marriage in the National Law Perspective in Waimangit Village, Buru Regency

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Abstract

Customary law, especially customary criminal law, originates from the customs of the community and is therefore called natural law. Customary law, an unwritten law, is the basis for determining good and bad behavior in certain traditional societies. The purpose of this study is to use criminal cases of marriages and marriages of Indigenous people in the village of Waimangit in Buru District from a national legal perspective. This type of research used in this study is a type of qualitative research. Research sites in Maluku Province, Buru Regency, Waimangit Village. The data used in this study are primary and secondary data sources. Forms of data processing in this study are data classification, data reduction, and data editing. Elopement or the act of taking a woman away with her consent (woman) to be married by a man who took her away in the traditional law of Pualau hurry and the national law of Buru Island is prohibited because of causing shame by the family of the woman's party so that it is threatened traditional criminal sanctions in the form of ostracism, persecution, expulsion from the village or murder. elopement in national law is prohibited if it violates Article 332 paragraph (1) number 1 of the Criminal Code about taking women away under the age of their consent, which is not in line with the imposition of customary law sanctions. As for the factors that occur eloping namely. The absence of the blessing from parents of both parties, the expensive dowry money charged to the men, the existence of different tribes, a pregnancy outside marriage, and religious differences.

Keywords: Customary Law, Eloping, Waimangit, Buru Island

INTRODUCTION

The statutory regulations in Indonesia is criminal law as regulated in Law Number 1 of 1946 concerning Indonesian Criminal Law Regulations. In addition to the criminal law listed in the laws and regulations, there is also known or recognized customary criminal law as mandated by the 1945 Constitution, Article 18B paragraph (2) which reads: 'The state recognizes and respects the customary law community units along with their traditional rights as long as they are still alive and following the development of the community and the principles of the Unitary State of the Republic of Indonesia, which is regulated in law. Based on Article 18B paragraph (2) of the 1945 Constitution, it can be understood that customary law, especially customary

criminal law is still considered valid as long as it is still alive and following the development of society and the principles of the Unitary State of the Republic of Indonesia.

Customary law especially customary criminal law originates from the habits of the community so that it is referred to as law born from below. Customary law as unwritten law is the basis for determining good and bad behavior in a particular traditional society. Customary law especially customary criminal law has certain sanctions if one or several members of a traditional community commit deviations or actions that are not following the norms and norms (Ethical Law). Customary law especially customary criminal law is only applied to traditional communities in certain areas so that the form of customary law varies from traditional communities to one community (other traditional. Anwar. 1997)

In Indonesia, it is rich in ethnicity and culture, some of which are found in Maluku Province, namely the tribes of Seram, Banda, Buru, Furur, Aru, Bacan, Gane, and Kada. Some of the eight members of these traditional societies are still bound by a system of norms and rules. customary rules, which are sacred or sacred. Especially for traditional Buru people. The traditional people of the island of hurry assume that customary law is not just habits, but also the person of their culture. And more than that adat is a way of life for the traditional island hunt community. As a view of life and personal culture, custom for people on the island of Buru is considered to be the same as the conditions of human life. Customary position in the island's life is believed to be conscious, that every human being is bound directly or indirectly in a system that governs leadership patterns, regulates social interaction between humans, regulating responsibility to the community, regulating social justice in society, guiding people so as not to waver in their belief in the power of God Almighty, and regulating social and customary sanctions against those who violate adat and others (Dudung. 2016).

One of the regions in Maluku Province where there are still many people who are bound by the system of norms and customary rules is the waimangit village community. Even though the area no longer fulfills the criteria of existence as a traditional community, the customary law values are spontaneously acted and obeyed as a rule that binds the community, so the sanctions that apply in these communities tend to be customary. In Waemangit Village some cases are considered to be deviating from the norms and cultural customs, namely elopement which is called "Kaweng Lari" by the community. The research focused on eloping. Elopement is a marriage that is carried out between a pair of men and women after agreeing to run together, which marriage creates (shame) for his family, especially for female families and is subject to customary sanctions.

Marriage is a form of marriage that is not justified by Waemangit adat. That is why the perpetrators of elopement mean that people whose marriages violate applicable rules or customs. In the Indonesian Criminal Code (KUHP), there is a similar offense with (elopement), namely the crime of fleeing women regulated in Article 332 of the Criminal Code. There are two types of offenses for escaping women in that article, namely taking away a woman who is not yet an adult, without the knowledge of her parents or guardians with her consent, where she is threatened with seven years in prison. The second offense based on the article is to take a woman away with guile, violence, or threats of violence.

So that it can be understood Kawen Lari in the custom of Buru Island a form of marriage that violates national and customary law. As stated earlier that based on the 1945 Constitution customary law can still be applied in tandem with national law. However, elopement is regulated in national and customary law so there is an overlap between the two rules. Thus, in the application (elopement) of traditional Waimangit people apply customary law and on the other hand apply national law. In this research, we want to know about the priority of the application of customary criminal law regarding or article 332 of the Criminal Code.

LITERATURE REVIEW

2.1 Marriage and the Importance of Marriage

The procedures for marriage in Indonesia are classified as diverse from one another because in Indonesia they recognize the existence of various religions and beliefs, which have different procedures. This is possible in the Republic of Indonesia which is based on Pancasila which firmly recognizes the principle of religious freedom (Subekti: 2002).

Based on Article 1 of Law Number 1 of Indonesia in 1974 concerning Marriage, Marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and everlasting family (household) based on a Godhead. Whereas based on the Compilation of Islamic Law (KHI) Article 2 Marriage is marriage, which is a very strong contract or miitsaaqan holiday to obey God's commands and carry out is worship. When viewed in terms of the law, marriage or marriage is a sacred and sublime contract between men and women which is the cause of the legal status of husband and wife and the halting of sexual relations to achieve family sakinah, mawaddah, warahmah. Marriage comes from the word "marriage" which according to language means forming a family with the opposite sex, having sex, or having intercourse. While marriage comes from the word an-marriage which according to language means to collect, insert, or intercourse (Iye, 2018).

Meanwhile, according to Sayid Sabiq (in Hadikusuma. 2003), marriage is "one sunnatullah that applies to all creatures of God, both humans, animals, and plants (Ghoxali, 2017). The definition of marriage is also conveyed by some scholars, the dintanya are as follows: 1) Hanafiah Ulama, marriage is a contract that provides benefits (resulting in) the severity of fun consciously (intentionally) for a man with a woman, especially to get biological pleasure .; 2) Maliki School, marriage is an expression (title) or title for a contract that is implemented and intended to achieve mere pleasure; 3) Shafi'i School, marriage is formulated with a contract that guarantees ownership for intercourse using the editorial (pronounced) "nikah or tazwij" or derived meanings of both; 4) Ulama Hanabilah, marriage is a contract by providing the benefit of the ability to hold family relations (husband and wife) between men and women. by holding help and member limits rights for their owners and fulfillment of their respective obligations.

2.2. Eloping

Running marriages can occur in an indigenous community. Elopement is part of traditional forms of marriage to certain tribes in Indonesia, in this case, it is more of a procedure for preparation for marriage. Elopement is inseparable from the culture in which the marriage process takes place. In general, an elopement is an event where a man escapes the woman he

will marry with the woman's consent, to avoid customary procedures which are considered to be protracted and costly (Indonesian Large Dictionary (in Iye. 2018) This understanding is in line with what Hadikusuma (2003) said that elopement often occurs because couples want to avoid customary requirements in conducting marriages. Running marriage is also a form of marriage that is not based on parental consent, but based on the unilateral will or willingness of both parties concerned.

The forms of running marriage that is, eloping together and eloping take away. Some experts contribute their thoughts to explain these two forms. And these experts have the same opinion about the two forms. Elopement together or in Dutch is called *wegloop-huwelijk* is a type of marriage that occurs with the escape of a prospective husband and wife without formal engagement or engagement which is generally found in the patrilineal system; known in the parental system, even in the matrilineal system. Eloping is a runaway act to carry out a marriage with the girl's consent. The purpose of this marriage is to avoid the various kinds of necessity as a consequence of marriage betel nut, especially from the interference and obstacles of the parents and relatives. Though the act was not always properly condemned by relatives. (Somad: 2005). The purpose of elopement together has similarities with the notion of elopement in general and the opinions of Hadikusuma that have been explained above.

The method of running elopement is that the girl's bachelor agrees to elope and at the designated time to run together, or the girl secretly takes the bachelor's relatives from her residence, or the girl comes alone to the bachelor's residence. Everything goes according to the tradition of the belarian. Besides, the girl and the bachelor (young couple) also leave a letter, an item or an amount of money in the girl's house, then save themselves in the house of the head of the community, or relatives, or it could be at the family's place of the bachelor (Sisuaity et al: 2019) This marriage system, if it occurs, is often continued by relatives who feel that their honor is disturbed by the police by using Article 332 of the Criminal Code as a basis for complaints. It could also be when the girl is taken away, then the young man can be killed before he reaches his hiding place or origin. After arriving safely at its place of origin, as in the case of eloping together, a ceremony was held in the form of honest submission; this is done in the event of sexual intercourse.

2.3. Criminal Sanctions

The Criminal Law Act (KUHP) currently in effect, is still a Dutch product. Even though there have been various changes made here and there by perfecting several articles following the conditions in Indonesia. The 1995 Constitution says "the position of the old regulation still applies as long as there is no replacement. Because the Dutch Criminal Code has not yet been replaced, according to article 2 the transitional regulation still applies. In the absence of the Penal Code, which is a national product, the government and legislature must review the possibility of a new Penal Code by accessing cultural customs that still apply in various regions in Indonesia. as is the case on the island of a hurry called customary law. (Hasan, 2014).

In general, elopement is an act that violates customary law, violates the authority of parents, and undermines the dignity of the parents and relatives of the party being rushed. But over time, there is an awareness that indigenous peoples also adhere to the principles of harmony

and peace, so the act of running for marriage in some areas can be forgiven by way of resolution. Therefore, in this marriage there are rules, including 1) First, the girl who is taken away must leave a sign of her departure, in the form of a letter and some money according to local customary provisions. The contents of the letter read the girl's apology to her parents for leaving without permission for marriage with the young man who called his name and relatives and his address.

For example on Buru Island, usually, the departure sign was placed in a hidden place in the girl's room, under the mattress or in a place to get rice every day; 2). seek protection. On Buru Island, the girl and the bachelor who does elope should report and ask for protection from the house of the traditional head, elders of the relatives in the residence of the bachelor, or the head of his village. The elders of the traditional bachelor party held an emergency meeting to find a solution with the girl's relatives. As long as there is no picture between the two parties, the girl must remain under the supervision of the customary head. (Belinda, et al: 2019). Implicitly, Article 26 of Law Number 1 of 1974 concerning Marriage implies that marriages that are not carried out by the guardian, then the marriage is canceled or can be canceled. Thus, this provision can be returned to Article 26 of Law No. 2 of 1974 concerning Marriage, which emphasizes that the provision of religious law is a determinant in the validity of a marriage contract. This provision is emphasized again by Article 19 KH which states that the guardian in a marriage contract is a harmony that must be fulfilled by the bride who acts to marry her.

METHOD

Research is a search effort and not just a close look at an object that is easily held. A research methodology is a set of rules, activities, and procedures used by the practitioners of a discipline. The methodology is also a theoretical analysis of a method or method. Research is a systematic inquiry to increase the amount of knowledge, also a systematic and organized effort to investigate a particular problem that answers. The type of research used in this study is the type of qualitative field research (Tahir. 2017). Qualitative research is research that is descriptive and is more likely to use analysis with inductive approaches, processes, and meanings highlighted in this study. The research location was in Maluku Province, Waimangit. This research approach is directed at the expression of the mindset that is used by researchers in analyzing their suggestions or in other expressions the approach is a discipline that is used as a reference in analyzing the object under study following the logic of that science. The research approach is usually adapted to the research profession that is a Normative Juridical Approach is a research approach that emphasizes the applicable laws and regulations namely the Criminal Code (KUHP) and related laws and regulations (Hasan, 2014).

In this study, there are two sources of data used, namely primary data sources and secondary data sources, namely: 1) Primary data is data that is the main source of this research in the form of interviews, documentation, and observation. The informants in the primary data source numbered five people. The five people consisted of the Village Head, the Village Imam, Community Leaders, helicopters, 2 men and women; 2) Secondary data is collected through library research or library research, with this author trying to explore and collect materials related to the title of this thesis either through books, legislation, scientific journals, writings

or papers, and other materials in the written form related to this research. then data collection techniques namely, Observation, Interview, and Documentation.

Data processing is defined as the process of interpreting field data following the objectives, design, and nature of research. The forms of data processing in this study are Data Classification, Data Reduction, and Data Editing. Data analysis is the process of simplifying data into a form that is easier to read and understand and interpret. In this study a qualitative data analysis method is used, which strengthens the analysis by looking at the quality of the data obtained. The collected data is then analyzed using the deductive analysis method, which is a way of thinking that departs from existing theories or rules. This method is used to analyze how eloping in criminal law.

RESULT

4.1 Eloping and hunting laws of the island Buru

Viewed in terms of the development of human life, the occurrence of law begins with the human person who is given by God a mind and behavior. Behavior that is continuously carried out someone raises "personal habits. If personal habits are imitated by everyone or even community groups, these personal habits become "custom". For adat to be applicable and adhered to all members of the community, the custom is complemented by sanctions which later become Customary Law. So that customary law is custom accepted and must be implemented in the community concerned. Flee in Buru Island custom is a form of marriage that violates the law and customary rules, this happens because one of the family does not approve of the love relationship of the two couples, so they take a shortcut.

On Buru Island in particular Waemangit Village there is an adat criminal sanction which is still applied even if only partially. The customary criminal sanctions are imposed for elopement perpetrators.

Based on the results of an interview with Mr. Wael as village Imam, stated that: Eloping is the action of a man against a woman running together to get married because of various factors namely the parents do not approve, and a very great love for the woman. Furthermore, according to Mr. H. Akhmad Assagaf as a religious figure, revealed that:

elopement is elopement conducted by men and women based on like and like because it is not sanctioned. Based on this, eloping is an act that is not justified by adat in Waemangit village, Buru Regency (Iye: 2018). Where parents do not approve which is generally motivated by differences in social strata in the family of women and/or men, rich and poor, and is also common because of dowry money, where dowry money is the amount of money given by the prospective bridegroom to the prospective the bride will be used to hold weddings and other wedding shopping needs. The dowry fees that are too high are one of the reasons for not being able to approve the relationship because it cannot be fulfilled by the male family.

The overwhelming love for a woman who ran away with the man is one of the factors that is very influential because it is in the name of love. To encourage men and women to have a greater desire to get married and to justify any means to grant it, one of them is eloping or.

So that it can be understood that there is no blessing from both or one of the elders of the elopement, especially women, and a great sense of love drives someone to do the action. This is following the acknowledgment of one of the perpetrators of AN kawushing ran with LT who stated that, "... several factors caused me to because of mutual love and lack of approval from parents. Likewise, what was revealed by LS that, "... the factor that caused me to cross out was that I loved each other and was already two entities"

The form of sanctions or penalties applied to elopement perpetrators are insults and / or mistreatment and / or expulsion from the village, and / or even murder if the violation is very severe. But those who can only carry out the punishment are the families of women who do.

These sanctions are only applied if those who do elope set foot into the village where they came from before returning home to legalize the bond/relationship so traditionally customary criminal sanctions can be applied to them. This is consistent with the statement of one of the adopters, AR and LS namely, "... because my actions violated," so I was driven out of the village, if I set foot in this village again then I would be beaten and even killed.

4.2 Eloping in National Law

Based on Article 28B paragraph (1) of the 1945 Constitution stipulates that every person has the right to form a family and continue his descendants through a legal marriage. So it can be understood that marriage in the Indonesian legal system is a human right.

The marriage must be valid, bearing in mind that Article 28I of the 1945 Constitution stipulates that in exercising their rights and freedoms, each person is obliged to comply with the law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill the just demands following moral considerations, religious values, security, public order in a society.

A marriage is considered valid if the marriage is based on statutory regulations (specifically marriage registration at the Office of Religious Affairs (KUA)) and the marriage is carried out based on the religion or beliefs of the bride, for example, for Muslims who hold marriages based on Islam.

Based on Article 4 of Presidential Instruction Number 1 of 1999 concerning Compilation of Islamic Law which stipulates that marriage is legal if it is carried out according to Islamic law following Article 2 of Law Number 1 of 1974 concerning Marriage.

Based on Article 2 of Presidential Instruction Number 1 of 1999 concerning the Compilation of Islamic Law regulates that marriage according to Islamic law is marriage, which is a very strong contract or *miṣaqan galīza* to obey the commands of Allah Almighty. and implementing it is Worship.

To carry out marriages based on Article 14 of Presidential Instruction Number 1 of 1999 concerning Compilation of Islamic Law, marriage requirements must be fulfilled namely husband, wife, marriage partner, two witnesses, and Kabul consent.

Marriage is a marriage condition that must be fulfilled by the bride and groom to marry her. Where the marriage guardian must fulfill the requirements of being a marriage guardian, that is, sensible, legal, and Muslim as regulated in Article 20 of Presidential Instruction Number 1 of 1999 concerning Compilation of Islamic Law. Marriage consists of walī nasab and trustees according to Article 20 paragraph (2) Presidential Instruction Number 1 of 1999 concerning Compilation of Islamic Law. Based on Article 21 paragraph (1) of Presidential Instruction Number 1 of 1999 concerning Compilation of Islamic Law walīnasab consists of four groups in which the first group takes precedence over the second group and so on until the next group, the first group is the group of male relatives straight line up ie the father, paternal grandparents and so on, the second group, namely siblings or siblings and their male descendants, third group, namely uncle's relatives, namely siblings, and their male descendants and the fourth group is grandfather's siblings, grandfather's half-brother, and their male descendants. (Firman, at, al, 2019).

If the most legitimate marriage guardian does not qualify as a marriage guardian or because the marriage guardian suffers from speech impairment, hearing impairment, or has become an elderly person, then the right to become a guardian is transferred to another marriage guardian according to the next degree based on Article 22 of Presidential Instruction No. 1 of 1999 about Compilation of Islamic Law. (Hasan, 2014)

The walī judge can only act as a walī nikah if the walī nasab does not exist or it is not possible to present it or it is unknown where it lives or is magical or adlal or hornbill based on Article 23 Number 1 of Presidential Instruction Number 1 of 1999 concerning Compilation of Islamic Law. Belinda et al. 2019.

elopement in Waemangit village custom which is a walībukan walīayah which is one of the main causes, the walīayah is obliged to marry the bride candidate but the walī nasab who approves the elopement replaces the father's walī if the father's walī is obliged to marry the bride candidate, as well as the entire walī nasab hornbills to marry the bride-to-be in the practice of silariang who becomes the nikah of marriage, that is, the judge.

In national law, the attitude of the Walī who does not marry his son because of the hornbill or does not want to marry his son is called adlal. Walī father is replaced by walī nasab who is closer to the prospective bride because adlal is justified in national law, based on Article 22 of Presidential Instruction No. 1 of 1999 concerning Compilation of Laws Islam stipulates that if the marriage license is the most entitled to marry a bride-to-be if she does not qualify as a marriage guardian, then the right to become a walī shifts to another marriage guardian to recruit the next degree (Susiati 2020).

For people who have lost their abilities, such as crazy people, women who have not reached the age of mumayyiz, including women who are still girls, maybe done guardian mujbir on him. What is meant by the validity of wali mujbir is that a wali has the right to marry a woman who is guarded among these groups without asking their opinion first, and applies also to the person (Tahir, 2019). who is guarded regardless of whether he is happy or not? Mujib is the right of a father to marry his daughter without the consent of the person concerned, with certain conditions.

However, if all those who become walī nasab are obliged to marry the bride-to-be, then those who become walī nikah can come from walī Hakim. Based on Article 23 paragraph (1) of Presidential Instruction Number 1 of 1999 concerning Compilation of Islamic Law, it is stipulated that a judge can only act as a marriage guardian if the teacher does not exist or is not possible to give birth or is unknown where he lives or is invisible or adlal.

In the case of walī adlal or hornbill, the new walī judge can act as marriage wedī. In practice, walīhakim, namely the local village or mosque faith, religious leaders, or community leaders. But if the walīhakim is a local village or mosque faith, religious figure, or community leader, the marriage is not legal according to state law. Because only after there is a Religious Court ruling about who has the right to be a judge of a marriage that will be performed will be considered valid as a walī judge in national law, based on Article 23 paragraph (2) of Presidential Instruction Number 1 of 1999 concerning Compilation of Islamic Law.

If walīadlal, the bride and groom can submit a walīnikah application to the Marriage Registrar (PPN) or the Head of the Local District Religious Affairs Office (KUA) which will then be forwarded to the Regency / Municipality Iaslam Religious Affairs section for the determination of the walī judge, who has the right to act as a judge. penghulu (Head of Sub-Documentation as the Head of PPN at the Ministry of Religion's District Office Counter (Somad, 2010).

When elopement is seen from the perspective of criminal law, no article explicitly regulates such actions in the articles regulated in the Criminal Code or other legislation governing criminal acts, only that there are articles regulated in the Criminal Code that correlate with Silariang marital acts, namely Article 322 paragraph (1) number 1 of the Criminal Code. In Article 332 paragraph (1) number (1) of the Criminal Code, it is regulated that guilty of escaping women is threatened with imprisonment for a maximum of seven years, whoever takes away a woman who has not adult, without the will of his parents or guardians but with his consent, intending to ensure his mastery of the woman, both inside and outside of marriage.

Article 332 paragraph (1) number 1 of the Criminal Code is similar to marriage in which the male takes the woman's side (to get married) with his consent without the knowledge of the woman's side, but this article is only intended for the woman who was taken away by the male with the consent of the women being minors or children.

5 CONCLUSION

Elopement or the act of taking a woman away with her consent (woman) to be married by a man who took her away in the traditional law of Island hurry and the national law of Buru Island is prohibited because of causing shame by the family of the woman's party so that it is threatened traditional criminal sanctions in the form of ostracism, persecution, expulsion from the village or murder. elopement in national law is prohibited if it violates Article 332 paragraph (1) number 1 of the Criminal Code about taking women away under the age of their consent, which is not in line with the imposition of customary law sanctions.

As for the factor the occurrence of eloping that is. The absence of the blessing from parents of both parties, the expensive dowry money charged to the men, the existence of different tribes, a pregnancy outside marriage, and religious differences.

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