



Effectiveness of Customary Law Hita La Uwa Uwato as A Form of Settlement of Pidana Theft in The Country of Iha Seram District of West

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ABSTRACT

This paper explains about how the process of solving the crime of theft using the customary law of Hita La Uwa Uwato (Whip Law) of Iha State of Western Seram Regency, research methods is empirical research by a sociological juridical research approach, data collection instruments are carried out by interviews of predetermined respondents, review of legal documents and observations. The collected data is then analyzed qualitatively. This research shows that, the completion of the Crime of Theft by using customary law in the State of Iha District of Western Seram Maluku Province is very effective where the process is whipped using rattan in addition there are also additional sanctions given, namely indemnifying, as well as apologizing to the community, and the factors that affect its effectiveness are, the Legal factor, Law Enforcement, and Cultural and Community factors.

Keywords: Theft, Customary Law Hita La Uwa Uwato, Ewektivitas Law.

1. Introduction

The State of Indonesia is a state of law (*rechstaat*), which means that Indonesia upholds the law and legal sovereignty this is a consequence of the ranks of sovereignty from the teaching of legal sovereignty that the highest power does not lie in the personal will of the ruler (the organization of the State / government) but in the law. Thus the power of law lies above all powers that exist in the State, and that power shall be subject to the applicable law.

To realize a prosperous and prosperous Indonesian society that is equally material and spiritual based on the 1945 Constitution (constitution 1945) then equal rights, degrees, dignity, and dignity must be realized in all fields both social, political, cultural, economic, and legal. The State of Indonesia is a pluralistic and pluralistic state consisting of various tribes, races, cultures, customs and habits embraced by each region, so that in cultural life, these customs or customs are a rule or instrument of life that must be respected and respected by the environment of certain communities implicitly then regulated in Article 18B of the 1945 Constitution (Salam, 2016). Awareness of norms or law by a society has been embedded in the values of culture or culture embraced by ancestors. In Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, "The State recognizes and respects the customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which is regulated in the Law (Christmas et al., 2020). Customary law, as a law that exists and evolves inside society (Yadin et al., 2021)

The violation of the norms or rules that have been agreed to cause disruption of order and peace of human life in public life, in accordance with the purpose of providing rules (guidelines and guidelines) in the association of life to protect individuals in relation to society, so that it can be expected the realization of a state of affairs. Man, orderly and just in the life of society. If there is a violation of the interests of individuals and the interests of the community, the state is given the authority to resolve through the state apparatus. The state has established a competent system for resolving disputes or violations/ crimes that occur in society. Criminal acts such as the crime of theft are acts that violate criminal law, so that the criminal law that is part of public law is a unity of regulations regarding human behavior that have been promulgated by the state through the government

and endorsed by legislative institutions and apply to all communities, with the threat of punishment implemented by the State. In criminal law, the settlement of criminal cases, resolved through a criminal process, known as *the Criminal Justice System* (Chazawi, 2011) which begins with a preliminary examination on the part of the police, prosecutors to the court, based on the Criminal Code and KuHP all this in order to restore the balance of the public interest that was violated.

The Criminal Code (Criminal Code) must actually be the embodiment of the culture and customs of our nation, this is strengthened by adigium in law, namely *Ubius Ubi Societi* (Ali, 2009) (where there is a society there is law) In certain community life in Indonesia The process of solving criminal acts is still carried out in Customary Law, this can be seen in several regions in Indonesia, including Minangkabau, Aceh, Bali, Maluku and several other areas in the archipelago.

Recognition of this customary law can also be seen in our constitution, where article 18 B paragraph 2 of the 1945 Constitution, has been expressly in substance to protect, recognize, respect, the rights of customary law as long as it does not conflict with other laws, there is also a form of protection of this customary law listed in the act. article 5 paragraph 1, article 10 paragraph 1 and article 50 paragraph 1 of Law No. 48 of 2009 concerning judicial power, which has established the existence of customary law. From the above incarnation it is clear that the state guarantees and protects the customary community and customary law itself. Customary law is widely known as an alternative form of settlement outside the courts this is reinforced by that customary law is part of positive law in Indonesia, in addition to Western Law and Islamic law (Ali, 2012). So many people only consider that the settlement process using customary law is only in civil matters, such as the division of inheritance, marriage, and land issues, but we must know that in customary law not only solve civil problems, there is also a process of settlement of criminal cases using customary law. Recognition of the existence of indigenous peoples varies greatly from sector to sector as well as forms of recognition of the existence of indigenous peoples by different local governments. (Bakri Sulaiman, Abrar Saleng, 2020) This can be known as customary criminal law which aims to maintain the balance that is in the community by using customary criminal law.

In one of the Customary Villages located in the Maluku Region of West Seram Regency, Iha Village or better known as Iha State. It has customs that are so strong, that almost most of the legal settlement process is completed through customary law. So that the customary criminal law is still used and inherited since the days of their ancestors. One example of criminal cases resolved through the customary law is the crime of theft

2. Methodology

In this research, using empirical research by *by a sociological juridical research approach*, namely discussion based on legal theories with its relation to seeing the reality that occurs in society. The data source used is primary and secondary legal materials, namely by interviewing in the field and also using Scientific Writings from research results

3. Result and Discussion

Among the many countries / villages in the Maluku islands, especially in The Western Seram Regency, There is one country that has a history, a custom that the author says is very worthy to be raised in this writing, the country is the Country of Iha-Ulupia located in the Huamual Peninsula has a variety of histories that are their own pride by the people in Maluku.

The country of Iha-Ulupia itself is administratively two countries, namely the country of Iha and Ulupia (Kulur), this happens because traditionally Ulupia (kulur) is also part of the IHA AMA Kingdom which used to be in Zasirah Hatawano, simply Iha is Ulupia (kulur), and Ulupia is Iha as well. The state of Iha is a unit of indigenous peoples domiciled in Jazirah Hatawano Saparua Island with the robustness of the Islamic Kingdom at that time, it was the Kingdom of AMA IHA. About 3.5 centuries ago the kingdom of Ama iha was polluted by the Dutch Colonial Government, so the King and Hulubalang (masyarakat) chose to leave the Kingdom with his wealth to inhabit the huamual region. Iha State is administratively included in the Huamual Subdistrict of West Sram District. The country of Iha has 5 (five) hamlets namely: Water papaya, Ely large, Ely red land, Uhe and Luhulama, The area of Iha Country is 3400 Ha with the following boundaries: The north borders the land of Luhu, the south borders the village of Warau luhu country, the west is with forests and mountains, The east is bordered by the sea. Customary delik is something that causes shock in the balance of society, shaking occurs not only in the rule of law violated but also norms - norms of decency, religion and decency in society while according to Van

Vallenhoven delik Adat is an act that should not be done even in reality the event or deed is only a small mistake (Kurniawan, 2016).

As we have known together that the environment and nature of indigenous peoples are very different from the people who live in big cities to know, is that indigenous law communities are strong nature of the mind *communalism* and *Magis Relego* (cosmic), this becomes the background of society, where customary criminal law plays a role. The realm of mind in such a legal society contains everything in this union as a homogeneous union in which man's position is neutral. Man is a complement of the great realm (cosmos), not separated from the world born from the unseen world and even fixated with the nature of animals and plants, more so with society itself as a whole, so everything mixes mixed, related and affects each other. Everything is in one balance and must always be maintained, if at some point disturbed it must be quickly restored. If there is a disturbance in the course of the federal organization and all customary traditions that are carried out as a hereditary manner is a grave violation of the law, while the violation of the law that harms individuals is a misdemeanor. In addition, violations that do not directly interfere with the alliance then indigenous elders / customary stakeholders (legal decisions) act when in demand by the interested

Customary rulings especially those that disturb the order of the federal community, groups and or individuals in order to improve the law are considered as customary delik. The customary delik gradually gets a fixed nature in the event of similar acts and is decided by indigenous elders or people who are competent in customary communion with the benchmark on the first ruling (Jurisprudency in Western Law). Any act or event in the customary system is assessed and considered based on the principle of the federal order that applies at the time of the occurrence of such acts or events can be considered unlawful despite the standard legal norms. Parental advice is passed down through generations to posterity and continues to be maintained until now as part of the foundation of customary law (Soekanto, 2002). In this relationship we project the delik-delik of customary law with the thoughts of the communalistic cosmic consumer. This nature of mind is the background to the customary law that applies in indigenous law communities in Indonesia. In the traditional realm of mind, always a legal society or fellowship as a unity takes precedence or is important. Also the law must attach more importance to communion than certain people individually, there are certain people who are important, rewarded more than before the law. It is in the customary law community because of its position in the community. So the more important the position of a person in society, more importantly the meaning of that person as a subject of law in the society (Bella Kalengkongan, 2017).

Customary criminal law can also influence in designing a provision of criminal law that applies nationally. This is based on the phenomenon that customary criminal law is a real law in society and applies in a obeyed manner even though the provisions are not written and open. The government in this case the formation of the law in drafting the provisions of the national criminal law should pay attention to the customary criminal law in the community. Here, it does not mean that the law means that this customary criminal law is included in the power of national criminal law. However, customary criminal law is made a reference in drafting the provisions of the national criminal law considering that customary criminal law is a law that lives in the community.

3.1 Effectiveness of Customary Law, Customary Institutions in Solving Theft Pidana

The current economic situation in society, it tends to be a crime. The number of unemployed is one of the factors in the occurrence of criminal acts of theft. People's needs are complex but jobs are very difficult. Interaction between one individual and another in a community environment is based on certain needs, interpersonal needs, namely the need to establish other people's relationships, which if not implemented will produce disorders or circumstances that are unpleasant to the person concerned and each of these interpersonal needs will give birth to certain behaviors. Customary law knows no previously established lawlessness and there is no clear separation between the field of public law and profit, the whole field becomes a touchstone of what is forbidden and what is not. Customary law is the entire regulation that incarnates in the decisions of legal functionaries who have authority and influence in their implementation and immediately obeyed wholeheartedly.

The people of Iha-Ulupia always respect, all forms of customary judge's decision in resolving some criminal acts of theft that occur in Iha, especially authoritative decisions from the people's leadership, as long as the ruling does not conflict with customary law beliefs. In the completion of the criminal act of theft using customary sanctions *Hita LA Uwa Uwato* in making sure the settlement is easier, and ensured there are no excesses and burdens imposed by the police who in this case as a positive legal device, will also be lighter. If this

is resolved legally positively, it can cause excesses, for example a guilty person is then sentenced to prison and one day can cause resentment in the future. In general, law enforcement officials provide opportunities to Indigenous Institutions in resolving cases or disputes that occur in villages / customary countries, especially in the country of Iha itself, in certain criminal acts and disputes the settlement process is still carried out using customary law.

Hita La Uwa Uwato Customary Law (Whip Law) is a traditional model or way of solving cases / crimes customarily using Islamic sharia that applies in the Country of Iha-Ulupia. By way of whips. This is an alternative out-of-court settlement based on the agreements of the parties to the dispute. This custom is usually carried out to resolve disputes. *Hita La Uwa Uwato* is a form of sanctions that is done by using rattan and whipped 7 times, and can increase if the crime is committed repeatedly. Criminal acts that are often resolved by customary law in the Country of Iha include, Adultery, Perrjudian, Theft, to drinking liquor, all acts of pidana aini are solved using customary criminals, namely by using *the Customary Law of Hita La Uwa Uwato*.

Based on the author's interview with Mr. Arif Samal (Community Leader, January 2022 Interview) that, this customary law has been used since ancient times since the ancestors and accepted by the community because it is in accordance with the soul of the Village / Country of Iha, this is in accordance with what was explained by Von Savigni (Achmad Ali, n.d.) who in his theory explained that good law is a law that is in accordance with the soul of the nation that we are better known to the theory (Achmad Ali, 2009). Walaupun is not explained that it began when, but according to the author that this customary law is a tradition, a custom that needs to be maintained and preserved. In addition, the process of settlement of customary law is very in accordance with the legal principle in criminal justice, namely simple, fast and lighthearted. So that all forms of decisions through indigenous institutions provide a sense of justice itself. And that decision if we look then in accordance with the purpose of the law itself, namely, provides a sense of the existence, usefulness, and legal certainty (Samosir, 2014).

In the settlement using *customary law Hita La Uwa Uwato* sanctions given in addition to using the flogging law there are also other sanctions as additional in the punishment including, apologies from the perpetrator, indemnifying victims, ostracized in the community, this additional punishment will be given in the event of a repeat of the same crime. In its journey, customs in the country of Iha cannot be separated from Islamic law. As explained above that in Maluku countries are widely known ways of resolving disputes through customary law, customary sanctions that boil down to Islamic sharia and are believed to have a deterrent element if it can be applied in resolving disputes / cases / crimes (Mulyadi, 2016). Along with the development of positive law, the model of resolving disputes through customary law in Maluku began to be forgotten, but in the country of Iha Seram Regency west until now the process of resolving disputes / crimes is still used, and maintained by the community. According to Mr. Zul Selan (February, 2022) as the Head of Mongare (Customary Designation for The Head of Youth) that the custom of *Hita La Uwa Uwato* (Whip Law) is a model of solving criminal cases that use rattan whips for the process of punishment or sanctions to those who have committed crimes such as theft. This statement explains that the purpose of holding *Hita La Uwa Uwato* to those who have committed theft, is actually to give effect and to seek justice.

The process of criminal smuggling of theft using *adat Hita La Uwa Uwato* according to the narration of Khairul Kaisupy as a youth figure (February, 2022) is the first case / case of theft reported to the staff of the indigenous government of Iha-Ulupia Then the king decided some youth staff to respond to the report and look for concrete evidence of theft cases, after getting evidence. And the perpetrator of theft, then the perpetrator was brought to the house of the head of the youth, but before the trial marinyo hit the gong as a sign there will be a trial in the house of the head of the youth, so that the community also knows there will be a trial against the case of theft and other crimes. And after being convicted and the perpetrator guilty then sanctioned with a caning 7 times with rattan, without wearing clothes and this punishment is carried out by Marinyo who is in charge of whipping the perpetrator, in addition to getting the caning the perpetrator must apologize before the community. After that the perpetrator is treated by the government's own state staff. From the results of the author's interview, with Mr. Salem Selan, as the former Head of Youth, theft that often occurs in the country of Iha-Ulupia, in the form of theft of produce, such as nutmeg, coconut and cloves. In addition, according to him there are several methods of punishment given to the perpetrator of theft, if the perpetrator repeats his actions again, if he repeats his actions again then the punishment is doubled 14 times and excommunicated from the community, if repeated

again then it is added to 21 times and expelled out of the country. *Hita La Uwa Uwato* customary law itself is regulated in the regulations of the State of Iha-Ulupia and implemented regardless of fur, this is a representation of the principle of equality *before the law*.

From the results of the above interview it can be seen that, the customary law used in the country of Iha is very important and then can be a solution in the process of seeking justice, especially for the Iha community itself, this customary criminal law itself can be one form of criminal law reform in Indonesia, because writing the author for Criminal Acts. Customary leadership positions in the group are required to solve issues, maintain the environmental balance with each other, so that the society can continue to create harmony and peace (Elmayanti et al., 2020). Lightly like this should be the process of settlement should use laws that develop and grow in the community. Based on explanation that the settlement process using customary law is going well and accepted by the community this shows that this process is very effective from the side of the settlement because so far no community has rejected or refuted the ruling.

3.2. Factors Affecting the Effectiveness of Customary Law

a. Legal Factors

The law serves for justice, certainty and expediency (Suherman, 2012). In the practice of legal implementation in the field there are times when there is a conflict between legal certainty and justice. Legal certainty is concrete tangible, while justice is abstract so that when a judge decides a case in the application of law only then there are times when the value of justice is not achieved. So when looking at a problem regarding the law at least justice becomes a top priority. The existence of law to humanize humans (aspects of its benefits) then what is regulated in legal regulations must bring benefits to human life. (Salam, 2020) Because the law is not solely seen from the point of the written law, there are still many rules that live in society that are able to regulate people's lives.

Regarding the legal factor in this case if it is associated with customary law that applies in the Country of Iha-Ulupia, it is very relevant to the purpose of the law itself, because this customary law itself can provide a sense of fairness, usefulness and legal certainty for the local community, with the strict sanctions that I have described above.

b. Law Enforcement Factors

In order for the law to work properly, then the mentality or personality of law enforcement is very important, if the rules are good, but the quality of officers is not good, there is a problem. Therefore, one of the keys to success in law enforcement is the mentality or personality of law enforcement.

In the above context that concerns the personality and mentality of law enforcement, that so far there is a strong tendency among the public to interpret the law as an officer or law enforcement, meaning that the law is identified with the real behavior of officers or law enforcement. Unfortunately, in exercising its authority there are often problems due to attitudes or treatments that are seen as exceeding authority or other actions that are considered to soften the image and authority of law enforcement, this is due to the low quality of the law enforcement officers. If I associate again with the Customary Law that applies in the Country of Iha -Ulupia, that the staff of the State in this case as law enforcement have a good mentality and personality in completing a criminal act of theft, this is because they are independent in carrying out their duties, regardless of fur, even if it is their own family, or from among the king's family.

c. Community Factors

Society in this case becomes a factor that is quite influential also in the effectiveness of the law. If the public is not aware of the law and or does not obey the law then there is no effectiveness. Legal consciousness is an abstract conception in man, of the harmony between order and tranquility as desired or appropriate. Legal awareness is often associated with the administration of law, the formation of laws, and the effectiveness of the law. Legal awareness is the awareness or values contained in humans about existing laws or about expected laws.

The above explanation makes me see that the people of Iha-Ulupia Are well aware of this customary law, this can be seen from the rate of theft that decreases to nothing at all in the Country of Iha-ulupia, people see this as a rule that pointsmerakain a better direction.

d. Cultural Factors

Culture has a very big function for humans and society, which is to arrange for humans to understand how people should act, act, and determine their attitudes if they relate to others. Thus, culture is a central line about the act that sets the rules on what to do, and what is forbidden. This factor is very important in the effectiveness of customary law, because it is a characteristic or soul of the people of Iha-Ulupia.

The above faktor is closely related, because it becomes a staple in law enforcement, as well as a benchmark of the effectiveness of law enforcement. These five factors, no factor is very dominant, all of these factors must support each other to form the effectiveness of the law.

4. Conclusion

Customary law is a known legal system in the social life environment in Indonesia. The source of customary law itself comes from unwritten legal regulations that grow and develop and are processed by people for generations. Hita La Uwa Uwato Customary Law in Iha Country is part of legal pluralism that until now is still maintained by the Iha community because it is able to solve the Crime of Theft. Hita La Uwa Uwato Customary Law can provide a deterrent effect against perpetrators of theft, and all forms of sanctions given are accepted and obeyed. In addition, there are several factors that affect the effectiveness of this customary law itself, including, the legal factor, the Law Enforcement factor, the Cultural Factor and the community factor. These four factors become the benchmark of law enforcement.

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