The Ngampang Punishment as a Customary Punishment for Indigenous People of Dayak Kebahan in West Borneo: A Juridical Normative Review

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Abstract

Ngampang has a similarity to adultery that regulated in Article 284 of the Criminal Code. In the life of Dayak indigenous peoples in Kebahan, West Borneo, ngampang is a deeds committed by man and woman that resulted in pregnancy and the birth of children out of wedlock. Ngampang is believed to be destructive of the life order of Dayak customary community of Kebahan and is believed to wreak havoc for the village in the territory of indigenous peoples, hence the custom sanctions are applied to restore the balance between the real and the spirit world. In the past, sanctions against actors in the form of adat reactions, ostracized from indigenous peoples, scorned, to the heaviest expulsion from villages accompanied by the payment of fines in the form of tawak singkap (gong) and pa singkap or sipe (a kind of copper tray). Ngampang have different values of punishment and decision of custom to bachelor, virgin, male or female married women, couple ngampang "so" (express ready to marriage stage), ngampang "not so" (male men are not willing to be responsible), and ngampang (pregnant women but did not find a partner). It can also be punished criminally only if there is one party who feels aggrieved as a rape victim. Ngampang must be completed and decided by the village team assisted by the head of the hamlet as a member. This study is a normative juridical study, using secondary data in the form of legislation related to ngampang (adultery), type of adat ngampang sanctions, custom sanction settlement procedures, documents and writings. Data analysis method used is descriptive qualitative, poured in the form of logical and systematic description.

Keywords: customary sanction, ngampang, Dayak Kebahan.

Introduction

The term of "Adil Kak Talino, Currently Kak Saruga, Basengat Kak Jubata" has a deep meaning for all Dayak indigenous community, wherever they are. That sentence is a greeting of peace and prosperity for all, and obligatory spoken by the Dayak indigenous community at each meeting. For Dayak indigenous people who hear that greeting, must answer with the word "Aruss" which means is a greeting of peace and prosper also for you.

The indigenous people of Dayak Kebahan strongly uphold the values or norms that inherited by their ancestors. The value or norm referred to as customary law which is a legal instrument, serves to regulate the whole behavior of indigenous peoples. One
of the problems that often arise in Dayak indigenous community is the existence of an intimate partner who causes pregnant women out of wedlock, which in indigenous communities Dayak Kebahan known as "ngampang". The act is judged as a deviant behavior in society, not justified, embarrassing and tarnishing the norm of decency. They will be subjected to adat sanction ngampang as accountability of his actions. With the customary sanction ngampang, can ensure order and continuity in indigenous people, can minimize the actions ngampang among indigenous peoples of Dayak Kebahan.

Normatively, in this country there is no provision that is unification and nationally about the act of adultery, in the sense of still very pluralistic (Irianto, 2003). Masaji Chiba’s Hypothesis: the three layers of law contained in the legal structures in Asian and African countries are official law, unofficial law and legal postulates (Chiba, 1986).

Some of the possibilities that occur from the encounter between state law with non-state law, meet in the same social locale: first, the possibility of integration between state law and other laws; secondly, it is likely that there will be an in cooperation in which each legal system adopts certain parts of the norms of the other; third, there will be conflict which is legal system rejects the enactment of a legal system other than himself.

Based on the above description, the authors are interested to conduct research in the form of scientific papers with the title, The Ngampang Punishment as a Customary Punishment for Indigenous People of Dayak Kebahan in West Borneo: A Juridical Normative Review.

Research Methods
This research is a normative juridical research, a doctrinal legal research, which is also known as library research. This research is conducted or directed only on written regulations or other legal materials: (Suratman & Dillah, 2014). Called literature research or document studies caused this research is more done on the secondary data that exist in the library.

Thus, this study focuses on legislation, which relates to the harmonization between state law and customary law in indigenous communities of Dayak Kebahan, documents and writings relating to the problem. This is in accordance with the usefulness of normative legal research methods that, according to Sunaryati Hartono, to know and know whether and how positive law concerning a particular problem: (Hartono, 1994).

Data analysis method used in this research is descriptive qualitative, the author will explain the data that obtained from literature study, poured in the form of logical and systematic description. After the necessary legal materials are collected, then make an analysis to obtain clarity of problem solving, then deductive deductions are drawn, from the general to the specific. At this stage legal material is worked out and utilized in such a way as to successfully conclude the truth that can be used to answer the problems posed.

Results and Discussion
The Review of the Customary Law
The term of "adat" is a term quoted from the Arabic word "adah", it means custom, referring to the ever-present behavior of society. Some call the originating from "urf", meant as all morals and customs of Indonesia (Samosir).

In addition to state law in the form of law created by the will of man through a single body with a particular working mechanism, there is also the need for the formation of
other laws, one of which is customary law, which is the ideals, feelings, and legal beliefs of the members society to adapt to the ever-changing social relationships: (Arrasyid, 2000). Therefore, the role of adat law is very important to meet the legal needs in society, in the sense of harmonization and harmony between customary law and national law.

In the harmonization context, (Wulansari, 2014) mentioned that: customary law is an important source for obtaining materials for the development of national law, which leads to the law's unification and which will primarily be done through the establishment of legislation, without ignoring the emergence and development of customary law and courts in the development of law.

In the development of national law, customary law is one element. The use of customary law institutions that are modernized and adapted to the needs of the times, without losing the characteristics and traits of the Indonesian personality. With the formation of laws containing elements of customary law, the position and role of customary law have been absorbed in national law.

Dayak is a tribe in Indonesia that has its own uniqueness, has many sub tribes with language and customs are patterned. This variety of implications implies differences in customs and customary law. On the basis of the consideration that the Dayak tribes exist are a cohesive tribe and to facilitate the unification, in 2001 a Dayak and Malay customary (Musdat) deliberation was held in Melawi Regency, attended by representatives of Dayak tribes from 22 villages of Melawi Regency. In the Musdat, customary data and customary law of Dayak were collected to formulate customary unity and customary law of Dayak, which resulted in the agreement that there are 2 (two) categories of Dayak customs (Hukum Adat Masyarakat Dayak Kebahan, 2001): a. Customs that use Real Permas, and b. Customs that use Ulun.

Based on the results of the above mentioned Musdat, a collection of Indigenous Customary Law of Dayak and Malay Tribes of Nanga Pinoh Sub district and District of Melawi Regency Supported specifically for indigenous people of Dayak Kebahan.

**The Review of Ngampang according to Dayak Kebahan Customary**

The word "Dayak" comes from the word "Daya", which means upstream to call people living in rural or Kalimantan in general and West Kalimantan in particular (now easily found Dayak residents living in cities, districts and provinces) who have similarities in customs and culture, and still hold firm traditions (Sukanda & Raji’in, 2007).

Dayak community still holds its dynamism belief. They believe that in every particular place has a ruler they call Jubata, Petara, Ala Taala, Penompa for God’s highest designation. They also had other rulers under the supreme authority of God, the ruler of the land, King Juata (ruler of water), Kama Baba (ruler of the land). For the Dayak who still adhere to the beliefs of dynamism and indigenous culture, then split into further and further inland.

According to the authors, the modernization that engulfs all aspects of life in indigenous Dayak communities is caused by science and technology that are rapidly causing social change. The impact of modernization appears in the shift of cultural values. Customary violations become more colorful (household issues turn into domestic violence, infidelity, divorce, immorality violations including acts ngampang). **Ngampang** is one of the customary cases that still occur in the indigenous community of Dayak Kebahan. If the act of pregnant women to give birth to a child, then the child who was born was labeled as an adulterous child.
According to customary law, the male will remain the father of the child born of the relationship. If on the basis of acceptable reasons, he may refuse to be the father of the child. Given the importance of customary law rules for indigenous Dayak customary communities, the role of the Adat Rulers to solve the problems in the community is enormous, whereas the customary law settlement institution of Dayak customary community is village Ketemenggungan. The existence of Ketemenggungan adat also plays an important role in community life.

Temenngung as adat holder, will give sanction a damp ngampang to couples who have sex as husband and wife that caused pregnancy. Both partners are considered to have polluted the environment, undermined the order of life, and is a disgraceful act, not in tune with the values prevailing in the indigenous Dayak cultures that cause unrest.

With the adoption of adat sanction ngampang against couples who have engaged husband and wife, the indigenous people of Dayak Kebahan believe that the sanctity and balance of the village that tarnished by the behavior of customary violations, has recovered. If the intimate relationships cause pregnant women to bear children, the sanction of adat ngampang will be even more severe and more extreme, the men and women who have sex expelled from the region where they lived.

The Review of Positive by Law
In the Criminal Code, an action that is almost similar to ngampang is overspel, published in Article 284. The literature that explains in detail about overspel is very minimal. Some experts give a brief explanation but it is sufficient to explain the nature of the crime and anyone who can be sentenced to a criminal. In the Code, the sanction for overspel couples is a maximum of 9 (nine) months in prison (Soesilo, 1996).

The difference between ngampang with adultery is: first, both ngampang and adultery/overspel is an intimate relationship between men and women; second, lies in the person who performs. Can be done by married men and women, or one married, or both are virgins and single men, resulting in pregnant women, while adultery/overspel in Article 284 of the Criminal Code is adultery, couples adultery is a person who is tied to a marriage rope or just one.

The difference is, the Criminal Code does not provide a detailed explanation of whether there should be a pregnancy for women who commit adultery, because it emphasizes the element of marital ropes for people who commit adultery.

Adultery comes from the word "adultery" (Tongat, 2003): the act of intercourse between men and women who are not bound by the marriage cord. The act of intercourse between a man and woman bound by a marriage rope with a woman who is not his wife, or a married woman with a man who is not her husband.

Based on the provisions of Article 284 paragraph (2) of the Criminal Code, it is known that adultery is a criminal complaint (klacht delicten), the emphasis of this criminal offense must be a complaint from the husband or wife who is harmed. Complaints should not be split, in which case all involved actors including men and women as adulterers should be jointly prosecuted.

Ngampang Customary Punishment According to Dayak Kebahan Tradition in Melawi District
Adat sanction have a very important role in problem solving in indigenous Dayak customary community. Such sanctions serve to restore the balance between the world of birth and the unseen world.
Acts contrary to customary law are illegal and customary law recognizes efforts to repair the law (rechtsherstel) if the law is violated: (Soepomo, 1983). Acts contrary to the rule of law is called customary crime. Still according to Soepomo, in principle the birth of indigenous delict is similar to the birth of each unwritten legal rules.

Ngampang is believed to be destructive of the life of indigenous people of Dayak Kebahan, and will bring disaster to the kampung where the indigenous peoples live. The customary sanction against the perpetrators of the form of material reactions of adat, ostracized from indigenous peoples, ridiculed to the severely severe sanction of being expelled from the village. The customary sanction depends on the case and the status of the perpetrator. If it is done between people who are already married and cause pregnancy, then both will get more severe sanctions and fines of magnitude adjusted to the customary law that prevailed at that time.

According to the customary law of Dayak Kebahan people, there is no physical punishment for the performer ngampang, but the moral must be borne and faced when socializing with the surrounding community. Ngampang can also be criminally punished if one party feels aggrieved as a rape victim.

In the past, if the indigenous Dayak community members proved to perform ngampang and resulted in the pregnant women, both of them will be punished by the custom of ngampang by paying a fine in the form of tumpak singkap (gong) and Pasingkap or sipe (a type of trays made from copper). This customary sanction will be different again if the pregnant woman gave birth to a child out of wedlock. As time goes by, items that must be paid as adat sanctions are increasingly difficult to obtain, then there is a change in the payment of adat sanctions.

Now, adat sanctions against ngampang couples in indigenous Dayak Kebahan community, Nanga Pinoh Subdistrict and Subdistrict Menukung experience changes in the verdict, as follows:

1. Ngampang done by male and female virgin:
   - Ngampang customary paid men 2/3 parts and women 1/3 part of the magnitude 80 real,
   - Kesupan customs village of 6 to 12 real,
   - Customary offenders of customary law of 8 to 16 real,
   - The custom of Mr/Mamak women's welfare of 6 to 12 real,
   - The cost of childbirth of 10 to 30 real,
   - Cost of life after delivery for 40 days is Rp.50.000,00/day,
   - Adat cabuh caca land, in the form of any animal or pig,
   - The cost of children is borne by men from the age of 0 years to 7 years of Rp.100.000,00/month.

2. Ngampang done by married men/women:
   - If this happens, then the customs are the same as the number 1 above, only coupled with the "kesupan" husband/wife coupled with a cap of kipak tool for 6 real. In the event of a divorce, the sanction of divorce is applied.

3. For couples "ngampang jadi" (declare to go to marriage stage):
   - Pig manua 50 kg,
   - Customary torso,
   - Customary law sarer 8 to 16 real,
   - Village kiss 6 to 12 real.

4. A pregnant woman who does not find her partner:
   - Pig manua 50 kg,
   - Customary law sarer 8 to 16 real,
   - Kesupan village 6 to 12 real.
Indigenous Dayak community believe that if customary offenders have paid for "cacah manua customary", then the sanctity of the village will return again by cutting the pig to be eaten by everyone in the village where the customary sanctions are carried out. The "cacah manua pig" cannot be cooked and eaten in the house (must be cooked and eaten in the yard) for the reason that the couple's actions are afraid to spread to children, and those under 20 years old may not eat it.

The encounter between customary law and state law in the settlement of sanction of adat sanction to adat indigenous Dayak people only occurs when there is one party who feels aggrieved as a rape victim which in KUHP is contained in Article 285 (criminal punishment in the form of imprisonment 12 years old). If the customary sanctions are parallel to the sanctions contained in Article 284 of the Criminal Code, then there appears to have been disharmonized.

Conclusions
There has been disharmony between customary law and state law in the settlement based on ngampang customary. Disharmonization occurs because the norm entities that regulate the same legal norms, essentially have different legal constructs. There has been a shift of values in the indigenous Dayak customary community and the existence of marriage to cover shame, causing custom sanction ngampang cannot be reflected completely on the couple who had intercourse that caused pregnant women. The spirit of the settlement of adat sanction on the Dayak customary communities of West Kalimantan is done through the empowerment of indigenous peoples in the process of adat law enforcement, including knowledge and understanding of the content of customary law, adherence and compliance of customary law, and the pattern of behavior of indigenous peoples themselves.

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