

THE EXISTENCE OF SILARIANG CUSTOMARY DELIK IN THE CUSTOMARY LAW OF KAJANG KAB. BULUKUMBA AGAINST INDONESIAN LAW

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Abstract: The factors that cause the occurrence of Silariang based on the customary law of the Kajang tribe are social stratification factors, where there are degrees of class. The factor of the lack of education and the occurrence of complex thoughts following the times so that sometimes they tend to forget their own culture without any interference from parents or from the family. Economic factors sareals overly influential for the two people to live independently so that what they do is considered not to violate applicable customs. And the promiscuity factor is then the lack of parental attention. Then the legal consequences for Silariang perpetrators, according to the people of Batunilamung Village, are the forms of sanctions that apply in Batunilamung Village, which are divided into three parts, namely: First, Principal Babbala means the most severe sanctions, fines for palaku as much as Sampulonrua reala or in Indonesian currency equivalent to one million two hundred thousand rupiahs is converted into Sibilangan angruangpulo reala in Indonesian currency equivalent to eighty million rupiahs. Second, Tangnga Babbala means that a medium or medium sanction is fined as much as Karua real equivalent to eight hundred thousand rupiahs which is changed to Karua pulo reala (eight million rupiahs) and approximately sixty million rupiahs for now. Third, Cappa Babbala means the lightest sanction is Annan reala equivalent to six hundred thousand rupiah in Indonesian currency converted to Annanpulo reala (six million rupiah) and equivalent to forty million rupiahs if it is equal to the current currency value plus one roll of cloth. White. So to give sanctions to perpetrators of customary violators depending on the violation.

Keywords: Juridical Review; Silariang; Kajang custom.

INTRODUCTION

Humans are "zoon politicun," which means that humans always want to get along and get together with other fellow humans or are referred to as social beings. When humans get along or get together with each other, interaction occurs. When there is interaction, misunderstandings or conflicts, or disputes are inevitable because they meet various interests, where these interests may conflict with each other. So that the law is needed to anticipate or overcome conflicts that may or have occurred due to conflicts of interest in a community. This is in line with the principle of *ibi ius ibi societas*, where there is a society and a law. Human beings interact and engage in activities in everyday life as a form of social life. This behavior is imitated by others and becomes a habit that continues to form customs in a certain group of people. As social life progressed, gradually people began to realize the existence of behaviors that deviated from preconceived habits. This resulted in the birth of oral rules that were imposed on all members of society to create a state of harmony, maintaining values and morals, and as a form of supervision of community behavior which was then referred to as customary until it finally became an ordinary law.

The flow regarding the birth of customary law indicates that customary law originated in society, so that it is referred to as a law born from the bottom up. Customary law or unwritten law is the foundation for determining good and bad behavior. Customary law has certain

sanctions if there is deviant behavior or is not by the order of norms and rules of decency. Customary law only applies to indigenous peoples in certain territories, so the form of customary law varies from indigenous peoples to one another. (Abd Rauf, 2018) Indonesia is rich in religious diversity, customs, tribes, and races. Every business in Indonesia has its own characteristics that were born from the people in the region. The relationship between women from one business and men from another is part of the communion of customary law (Soepomo, 2003). This shows that customary law is the original Indonesian law. Examples of indigenous peoples are the Minangkabaudi of Sumatra, the Dayak tribe of Kalimantan, the Kaili tribe in Central Sulawesi, the Kajang in South Sulawesi, the Nuaulu tribe in Central Maluku, and various other indigenous peoples in the archipelago.⁵ Each of these communities has its customary law that applies to all community members according to their respective territories. Slowly, Indonesia formed a system of government, laws, and rules written in addition to these customary rules (Muhammad, 2006).

When the population of community groups continues to grow, then there is also a merger between one community and another because of marital ties in a family group, then forming a legal alliance called a customary law alliance, then gradually a system of government is formed that can be called a State. At the level of government, it is only transformed into a

state law. Because of its written nature, the law of the State becomes a statutory law. The written rules that form the basis for determining punishable behavior apply to every Indonesian citizen. These rules are contained in the Criminal Code (KUHP), which emphasizes the relationship between people and the state, while the rules that emphasize between people and people are included in the Civil Code (KUHPer).⁷ This is what distinguishes national law and customary law, National law distinguishes between criminal law and civil law while in customary law does not distinguish between these two things.⁸ Specifically for criminal law, there are several concerns when faced with customary law (Jaya, 2016). One case that can explain this argument is a murder case that is traditionally sanctioned and in national criminal law.

One of them is the Nuaulu tribe in Central Maluku, who make human heads as a tool in traditional events. In connection with this case, the judge must study the customs that apply in the Nuaulu tribe as per the Judicial Power Law Number 4 of 2004 Article 28. Not only in Central Maluku, but the Dayak tribe on the island of Kalimantan also has a rule that if one of their people is killed, the perpetrator of the murder must also be killed. This is called blood paid for with blood (Anwar, 1997).⁹

South Sulawesi also has indigenous peoples such as the Nuaulu tribe in Central Maluku and the Dayak tribe in Kalimantan. One of the customary laws in South Sulawesi is the Kajang customary

law in Kajang District, Bulukumba Regency. The indigenous people raise, herd, and grow crops in the Kajang customary area. The characteristic of the Kajang indigenous people lies in the black clothes they wear daily and walk barefoot. The fabric of the clothes worn is self-woven (Darmapoetra, 2014).

All forms of electronic goods are not used in the inner Kajang area; the rule also applies to anyone who wants to enter the customary territory. The Kajang indigenous people have customary leaders and traditional stakeholders. The traditional head is called Ammatoa, which is a person who is clean in heart and is chosen by certain rituals. One of the parts that the Kajang indigenous people continue to maintain is preserving the environment by protecting the forest. This is also regulated in customary law, for example, if one of the people wants to cut down a tree, the person must plant two seedlings and then take good care of it until the specified time, and then the person can cut down onepohon. The forest can be cut down and utilized, as well as a sacred forest that can only be used for formal ritual events. Each of these rules also has customary sanctions for anyone who violates them.^{11th}

After two years of fighting for forests whose territory continues to be used by companies, the Bulukumba Regency government has issued a regional regulation related to the forest, which essentially makes forests with certain areas as customary forests. In addition, several regulations are customary for criminals such as incest or inbreeding and silariang,

namely marriages carried out without the blessing of both parents and do not meet the elements of marriage as they should. Silariang is one of the traditional areas in the Kajang traditional area of the bulukumba regency. Silariang is a customary crime that results in shame not only on the person concerned but also family and relatives. As a result of these actions, there are expected sanctions that are imposed, both light and severe sanctions depending on the form of silariang carried out (Anwar, 1997). Any action that is not by norms and decency is subject to customary sanctions. Kajang indigenous peoples have their own way of applying sanctions for acts that are not by customary rules, for example by making perpetrators physically ill. Customary sanctions in the Kajang customary area range from sanctions to severe sanctions (Mulyadi, 2013). However, if there is an act in which the perpetrator does not confess or surrender himself, a higher procession will be carried out in the form of a ritual.¹² Rituals are performed by traditional leaders and traditional leaders by burning a crowbar, the person whose hands are burned is a sign that the person is the culprit.¹³

If through the ritual, no perpetrator is found who can escape before the ritual is carried out, then the next ritual that is considered the most severe is to burn incense to find out the perpetrator. Through this ritual, the perpetrator will be found, and then the perpetrator will get sanctions that are magical in nature, for example, shortly they will get an accident and even die. This applies not only to the perpetrator but also to the person who

hides information about the perpetrator. The types of sanctions that apply in the Kajang custom differ according to the customary regulations carried out such as paying fines, being expelled from traditional areas, being thrown out of the family, and so on. The customary delink discussed in this study is silariang. Therefore, it is important to know the process of applying sanctions, including procedures for knowing the perpetrator if the perpetrator does not turn himself in and the things that are the basis for its application. Especially for customary delink, namely silariang and things that are the basis for the application of expected sanctions.¹⁴

MATERIALS AND METHOD

In this research, the method that used is a normative research method. Normative research method is method conducted by searching data through library research. this research is a normative research because it was through a literature study. the data collections that presented in this study is in the secondary data collection. Secondary data is data that has been processed only obtained by researchers from other sources. The examples of secondary data sources are journals, books, article of research results, various bulletins in the field of law related to copyright and intellectual property. Secondary data sets may best be used for descriptive, exploratory, and correlational studies in which representative samples. After the data is collected, it is processed and analyzed in order to answer the existing problems.

RESULTS AND DISCUSSION

That the notion of silariang according to kajang customary law is no different from the notion of silariang as it is interpreted i.e., the existence of a man and a woman then, for some reason, the intention to unite has an obstacle finally at the will of each so the two people run away from the village to realize the purpose to unite (Bakri, 2008). Silariang traditional delink is a customary delink that rarely occurs in Kajang even in one year, the silariang traditional delik may never occur. People are said to do silariang when it is known their status or the place where they are. If the group is not yet known, an investigation is first carried out by reporting to the village head, Abdul Salam, that the residents in the village are reduced, in the sense that some are not in the area and their whereabouts are not yet known. Abdul Salam explained that his position was as a government representative who immediately searched for villagers who reported according to the information received (Hadikusuma, 2003).

After the whereabouts of the villagers are known, and it can be ascertained that the person is right to do silariang, the conclusion can be drawn that the two people violated one of the traditional delik. As long as the information obtained cannot be directly ascertained by the village head, the person should not necessarily be accused of silariang. Because of the truth of the news, the family on the part of the man was called as well as the female side, to

be told that it was true that their son did silariang. The woman's own family should not call her child to come back for any reason, such as missing her child or worrying about her child's situation. Women who perform silariang can only return if they can comply with customary rules to return to the region. Men and women, if they can meet these requirements, must not necessarily show themselves but must mediate (Rias, 2013). For example, a woman performs silariang and together with her husband lives in Malaysia; one of the woman's family conducts mediation by making sure she is qualified to return, and then the mediator conveys to the village head that only a couple who perform silariang can come back to their area to return.¹⁷ That the Kajang indigenous people have four groups which contain various rules, including in the marriage process.¹⁸

- a) Karaeng residents (Sunrang Karaeng)
- b) Indigenous family (Sunrang Adat)
- c) Common people (Pattola)
- d) Budak (Ata')

The four groups cannot be characterized by features in everyday life, such as certain clothes other than black or the shape of the house, but rather seen from the lineage that the indigenous people of Kajang have known from generation to generation. The traditional family in the second category is the highest group, but bureaucratically the kara eng level that holds a central position in the government, so that in the placement of the order of kara eng or sun rang kara

eng citizens is in the first place. (Widnyana, 2013) When entering a marriage, the rule that applies is that the fourth class cannot marry the three groups above it. This has indeed been regulated in the tide or message that if violated will cause sanctions. While the first, second, and third groups can enter marriages if approved by the family. For example, a man of the third class will marry a woman of the first class, if the family of the first class agrees then the marriage can be carried out. The process of accepting the application must pay attention to two things, the first is the family on the part of the woman, and the second is the woman herself. If one disagrees then the marriage should not be performed. It is on this basis that when a woman agrees while her family disagrees it can lead to silariang. Silariang occurs because of consensual feelings referred to as *abbajong*. This is not expressed as the youth today but rather seen from behavior and stories. Here are some of the causes of the occurrence of silariang in the Kajang legal community described by Galla Puto' Bolong:

- 1) A man wants to propose, but the female family does not approve.

The process of the wedding is a matter of concern. The first is the consent of the proposed woman, and the second is the consent of the family, in this case, the two parents (Father/Ammang and mother/Anrong), grandmother/bone bahine and grandfather/bone buru'ne on the side of the mother and father along with the sisters and brothers on the side of the mother and father who are later referred to as *Appatomamana Ruatu*

lassukang. The voice of the family is a unit; if there is a difference of opinion, then the vote must be rounded up first. The proposal was not approved by the family even though the woman who was proposed to agreed that the marriage could not take place. This is one of the causes of silariang. Here is a procession to the wedding that can be connected with silariang:

- a. The procession of ambassadors (*a'duta*) is the process of men proposing to women.
 - b. The determination (official ambassador) is the determination of whether the application is accepted by looking at two points of view, namely, the woman being proposed and the family.
 - c. *Panai do*, i.e., the representative of men to discuss economic issues and date setting.
 - d. Traditional wedding procession
Silariang occurs when on the second point, namely the appointment or official ambassador, there is a dissimilarity of desire, namely when the woman receives the proposal. At the same time, the woman's family does not accept it. Disagreements on the part of the family can be caused by:²¹
 - a. There are differences in social status.
Social status, in this case is related to the descendants of the family and the male side as stipulated in the four groups above. The existence of consensual even though the social status of women and men is much different, can also be a cause of silariang.
 - b. The material ability on the part of men is lower than that of women
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Marriage requires material preparation to meet all needs from the beginning of the event until all the processions are completed. If the man has material abilities below the woman, it can make the family disagree, which can also make the proposed woman disappointed and choose to run with the man who wants to apply.

c. Family background

If the family on the male side has committed theft, it will usually be a consideration for the female side to accept. The existence of past violations from either the man who wants to propose or his family, such as the father or mother, can influence the decision of the woman's family.

d. There have been disputes between families before

If, in the past, the two families on the part of men and women have experienced a feud, it can cause the intentions of men and women who want to marry to be disproved by history.

2) Sippanturai or curse

The curses uttered in the past are words that must be accounted for and must not be violated—for example, not marrying off their descendants to the descendants of a particular family for up to two or seven generations.

It should be noted that the Kajang indigenous people have a customary structure like a government structure, organization, or institution starting from the traditional chairman, namely Ammatoa, to specific parts according to

their respective duties. In addition, the resolution of customary cases that occur in Kajang through normal courts that still uphold the value of deliberation. Here is the process of completing the Silariang traditional delik based on the explanation from Galla Puto' Bolong. At first, the silariang customary delink that occurred was resolved in a small scope, namely between two families. If no meeting point or solution is found and the women report to the customary stakeholders, customary sanctions will be implemented with the following steps:²²

1) Dipassala (trial)

That is the implementation of the trial of the problem that is facing the middle. Every decision taken should not be unilateral because it is discussed deliberatively to find the best solution by listening to both parties. Therefore, it is carried out in customary courts.

2) The existence of a land guarantee

The male family is called to find the daughter, and usually the land being cultivated is used as collateral that will be returned if the daughter has been found.

3) There are two main divisions of customary sanctions for the Kajang indigenous people who carry out silariang, namely light sanctions and severe sanctions. Customary sanctions are not implemented if the families of those who feel aggrieved do not report to the customary stakeholders. If the family does not report, then the sanctions cannot be carried out. Ahwa, if the passau Pattinson has been carried out, then the man and woman who do

the silariang want to return, then bad things will happen, such as having no children, if they have offspring and in the future the descendants do the marriage then in a short time one of them will die, get crazy offspring. Other tribes in South Sulawesi also apply severe sanctions like this, for example, the Makassar Bugis tribe which also comes to the boycott of eliminating lives if there is a family member who performs silariang because he bears siri' or shame.²³ In the Kajang customary law community, if in the end, the families of both parties wish to accept the return of their child and see his grandson, then to abolish the impact of the Passau pattunuan is held dinging. The transition from light to severe sanctions has no maximum limits; it all depends on the party who feels aggrieved, namely the women's families. The minimum limit is three days. If the family, in this case the parents, feel that their child's behavior deserves severe sanctions, then they usually immediately utter a curse or sippattunrai, but if you want to go through the traditional procession, pattunuan Passau is carried out. Pattunuan passau as a severe sanction is carried out with full awareness that it is the consecration of God and nature. Therefore, even if one-day Andingingi is carried out, it does not guarantee the loss of the impact of the passau pattunuan everything depends on God.²⁴

What needs to be considered in this matter is not to rush into making decisions. The anger felt because of the site or shame should be able to be overcome because if in the future they

still want to accept their child back, the andingingi that was carried out is not able to guarantee the loss of the impact of the Passau pattunuan because this is the nature of a divorced person, it is not expected but can be carried out. The application of sanctions itself can be gradual, starting from light sanctions and if before severe sanctions are implemented, men and women who carry out silariang again then the sanctions are quite there. Such mild sanctions may be imposed entirely and may also be chosen depending on the aggrieved family. In the past, the implementation of sanctions for women who silariang with outsiders was immediately subject to severe sanctions.²⁵ However, it is silenced first until the person's whereabouts are known and then visited. If no way out is found, then severe sanctions are imposed. However, in this day and age, if men from outside Kajang go with women in the Kajang customary area who are not old enough, they can be reported to the authorities as a criminal case, namely:

Article 332 of the Criminal Code

- 1) not more than seven years, whoever takes away an immature woman, without the wishes of her parents or guardians but with her consent, to ensure mastery over the woman, both inside and outside the marriage;
- 2) not more than nine years, whoever takes away a woman by deceit, violence or threat of violence, with a view to ascertaining her mastery of the woman, whether inside or outside of marriage
- 4) Basically, in addition to light sanctions and

severe sanctions, there is one sanction that will never go away for anyone who commits silariang, namely the history attached to him and his family so that they bear the shame and cannot serve in the composition of customary stakeholders and the government or the structure of village offices for two times seven derivatives termed with "sippanruapitu". As for the people who perform silariang and both are indigenous peoples in two different places, for example women from the kajang indigenous people while men from one of the indigenous peoples in the Bali or Dayak area, the sanctions still apply to parties from the Kajang indigenous people. Meanwhile, if the spouse wants to live and settle in Kajang, both of them must meet the requirements of returning to the custom and must follow the applicable rules of Kajang customary law as appropriate. If the person does not also return to custom then the family still suffers the consequences. Sanctions for the traditional silariang delik must be implemented to prevent the occurrence of unwanted things such as the existence of feuds or grudges between the two parties because those who bear the consequences of the violation of the customary delik are not only the perpetrators but also their families, especially this is very related to the so-called siri' or in Indonesian called "shame". If men and women want to return to the area, Abbaji is carried out in the form of a procession that is handled directly by the head of the hamlet or village head instead of the traditional leader. The couple who performed the silariang were mediated and conveyed to the village chief.

However, if the family on the woman's side no longer accepts this wish then abbaji cannot be asked again a second time.²⁶

CONCLUSIONS

Silariang is the existence of consensual between men and women then for some reason, the intention to unite experiences obstacles and at the will of each of the two leave the customary area in order to realize this intention. The sanctions that apply to those who perform silariang are light sanctions, namely the removal of inheritance rights and their position is considered non-existent. Light sanctions for families include breaking the relationship, expropriation of arable land, abolishment of debt receivables agreements and severe sanctions in the form of Appasala, sippattunrai, and pattunuan passau. The Abbaji procession is an obligation performed if the person performing the silariang wants to return to the custom, the procession as a mutual restoration or for cosmic balance. The legal basis for the application of sanctions for traditional silariang in the Kajang customary law community of Bulukumba Regency is Emergency Law Number 1 of 1951 concerning Temporary Measures to Organize the Unity, Composition, Power, and Procedure of Civil Courts in Article 5 paragraph (3) letter sub (b), which reads as stated above. In addition, it is also based on the criminal customary law that applies in the Kajang indigenous community of Bulukumba Regency

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