

The Completion Pattern of Adultery Case Based on the Customary Law of Sabunese

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Adultery, according to Sabu Society is relations between a man who is bound a custom matrimony or religious marriage with a woman who is bound a matrimony or one of them has bound in a matrimony. Adultery, based on the positive law is ruled in Article 284 of Indonesian Penal Code (KUHP). Chapter 284 KUHP has the point that a man or woman who has been married and doing adultery (overspel). The point in chapter 284 KUHP has similarity with the point in customary law of Sabunese, namely adultery is conducted with someone (man or woman) who has been joined in matrimony. Based on the research has been done, it found that the people of Sabu is prefer to completing adultery customarily because of some factors, that is: sanction and serious fine, it is normally using the completion customarily with the people of Sabu, the justice law based on the people of Sabu, the effect of completion and completion pattern. Two patterns of completion which appears in completion process of adultery based on the customary law of Sabu is the completion pattern in kinship way which are preventing and protecting.

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INTRODUCTION

ADULTERY according to the people of Sabu is intercourse between a man who has been bound by a marriage both a traditional marriage and a religious marriage with a woman who has been bound by a marriage or one of the parties has been bound by a marriage. Adultery (*satiety, huka*) is an act that violates the values of politeness and obedience that can damage the kinship of the Community of Sabunese, therefore customary law (*wolo-ku rai*) also regulates the prohibition of adultery for the indigenous people of Sabu. Adultery according to positive law is regulated in Article 284 of the Criminal

Code (KUHP). Article 284 of the Criminal Code has elements of a man or woman, having married and did anything (*overspel*). The element in article 284 of the Criminal Code has in common with the elements in the Sabu customary law that adultery is carried out with someone (male or female) who already has a marital bond. The offense applied in positive law is an absolute complaint offense which means that the complaint can be accepted if the complaint is committed by someone who feels aggrieved in this case a husband or wife but in customary law, the complaint is made by anyone who catches the perpetrator's hand while committing adultery, this becomes the difference between customary law and positive law (Soesilo 1996).

Furthermore, the adultery or *overspel* is regulated in Article 284 of the Criminal Code which can be categorized as one of the crimes against decency. Decency offenses in the Criminal Code are contained in two chapters, namely Chapter XIV Book II which is a crime and Chapter VI Book III which includes the type of violation (Bahiej 2003). Those included in the group of decency crimes include actions:

- a. relating to drinks, which relates to morality in public and that relates to objects and so on that violate decency or pornographic nature (Articles 281 - 283);
- b. adultery and others related to obscene acts and sexual relations (Articles 284-296);
- c. trafficking of women and underage boys (Article 297);
- d. relating to medication for abortion (Article 299);
- e. intoxicating (Article 300);
- f. submit children for begging and so on (Article 301);
- g. animal abuse (Article 302); and
- h. gambling (Article 303 and 303 bis)

The criminal provisions stipulated in Chapter XIV concerning crimes against decency are deliberately formed by the legislators with the intention of protecting people from immoral acts and behaviors both by speech and by acts that offend morality because contrary to the views of people about sexual compliance, both viewed from the point of view of the local community and in terms of the habits of the community in carrying out their sexual lives (Lamintang 1990; Bahiej 2003; Berlian, Andrisman, Warganegara 2019). As stated by Wiryono Prodjodikoro that morality is also about good customs, but specifically a little more about the sex of a human being. Accordingly, criminal acts concerning decency offenses should only be acts that violate the norms of sexual decency which are classified as crimes against decency (Dading 1982, Bahiej 2003; Brenner 2006). However, according to Roeslan Saleh, the notion of decency should not be limited to the notion of morality in the sexual field, but also includes other matters that are included in the mastery of norms in behaving in the community (Nawawi Arief 1996; Bahiej 2003; Astuti 2015; Burns 2007; Chirayath, Sage, Woolcock 2005).

Based on the things described above, the author feels interested in conducting further research on the Pattern of Settlement of Adultery Cases

According to Sabu Customary Law. Based on the background description, the problem in this research is why in the adultery case investigation, the Sabunese prefer traditional examination? What is the pattern of adultery cases in Sabu customary law? The research that will be carried out by this researcher falls into the category of empirical legal research.

In this study the primary data collection technique that the researchers did was field research namely research conducted by examining the field directly using direct interview method. While secondary data collection techniques are carried out through library research. The data processing method in this case uses stage editing which is perfecting the answers from respondents and coding which is to rearrange regularly and systematically all the data that has been obtained. In the research method of data analysis used is descriptive qualitative, that is the entire data collected both primary and secondary data are arranged systematically, classified in patterns and themes, categorized and classified and linking one data to another after interpretation and interpretation to provide an understanding of the legal issues being studied.

PRINCIPLES UNDERLYING THE ESTABLISHMENT OF A HOUSEHOLD (THE RELATIONSHIP WITH ADULTERY CASE)

ADULTERY according to The Community of Sabunese is a sexual act committed by someone who has been bound by a traditional marriage (*kenoto*) against someone who is already married or who is not yet married. The people of Sabu hold the principle of monogamy which means that they can only have a wife and a husband, which means that if they violate the act, it can be said that adultery is the principle. Underlying the Establishment of a Household Customary law regulates various things in life such as marriage or in a household. The establishment of a household is based on several principles. The main principle is love, without love, a household cannot work well. The following principle is an agreement and the principle of agreement covers several stages, namely: the *Oro li* stage is the initial stage in the Sabu traditional marriage ritual series, which is considered as an introductory stage between the two family families, the female family and the male family before entering the core stage of traditional marriage. *Maho ami* Stage is the second stage which is carried out in traditional marriage (*kenoto*) at this stage the two families discuss matters that need to be considered in the marriage event. This stage focuses more on the agreement of the two families so that there is no misunderstanding in the implementation of customary marriages. The agreement in question is about marriage dowry requirements (*belis*) which must be met by the male family at the time of *kenoto*. *Kenoto* stage is the core stage in indigenous marriage. At the core of the conversation at the *kenoto*

stage, women surrender the requirements in the form of *belis* to the female family and the female family accepts the requirement. After *Kenoto* is over, the bride must leave her family to follow her husband, through the *Pida Ammu* program. This *ammu pida* program is divided into two parts, namely the giving of advice (*takka li*) and the giving of ancestral food (*penga'a*). Providing advice is carried out by parents of the bride and groom. Advice given by parents to the newlyweds in order to maintain domestic harmony, such as *jhe adho jhoko do ie takajha haku ama namone* whose straight translation is not permissible and not good for your father's pocket but in the sense that the meaning of the advice is not to be presumptuous or not may commit adultery, if there is a mistake between you, rebuke each other do not be angry with each other (*left nehala hedou pelango hedon ri hedon bhole era nepebubu dhara era*), do not walk alone (*bhole kako miha*) (Astuti 2015; Crouch 2009; Dake 2015).

The structure of the indigenous people of Sabu is divided into four people who become the Adat Council or in the Sabu language called *Bangngu Uudu*. The main task of *Bengngu Udu* is to lead everything related to customs that take place in the Community of SaBunese. The Adat Council consists of *Deo Rai* (the highest adat leader), *Mone Rue* (the problem of cleaning up disgrace), *Eppu Lodho Lou* (an incident involving the sea), *Eppu Lodho Rai* (an incident that occurred on land) (Haq & Sumanto 2017; Holzner & Oetomo 2014; Imanuel 2013).

CUSTOMARY RULES RELATED TO ADULTERY

CUSTOMARY rules are a provision that must be obeyed by every member of the Community of Sabunese. The rules even though not written but still obeyed and carried out, because it has become a provision agreed upon jointly. The rules relating to adultery among others are that a married man is not permitted to enter the sister's room, and vice versa a married woman is not allowed to enter the brother's room. This rule is called "*takajha haku ama namone*" the meaning contained in this term is a prohibition. Sabunese consider this to be a very taboo act if done, either by men or women. That is why they are given advice so that they are always as loyal as they are in a married life. This prohibition is closely related to the term *medera wurumada highi* and *medera wurumada ei*. Marriage is a matter that is done on the basis of mutual liking between men and women, and needs to be maintained.

Based on this provision, men or women avoid behaviors that go beyond social boundaries and respect a marriage. The term *medera wurumada highi* for men and *medica wurumada ai* for women means that the blanket for men (*highi*) has a tassel on the lower end of the blanket which is normally used to have a limit on the ankle but if it exceeds this limit or exceeds the ankle so that it is dragged to the ground the user of the blanket will step on the

tassel of the blanket causing it to fall and remove the sheath. Likewise the case with women who use sarong (*ei*) if it is used to exceed the limit, it will be stepped on resulting in falling and the sheath is released or open. When holding a wedding Parents explain and enter into an agreement with the bridegroom, if the bridegroom commits an offense leaving his wife to continue to fall in love with another woman (adultery), he must bear the shame of all his family and also the shame of the family of the woman. Customary fines, he (male) must kill animals in this case, pigs (*wawi*) and buffalo (*kebhao*), in customary terms the local community is called “*hengebbhi pudi mekae ama nemone*” (Jaya 2016; Masril 2014).

This fine is given not for the purpose of divorce but to only cover the shame of the family or in other words as an apology from the man who commits adultery. The main purpose of the fine is to reconcile. Animals that are in the form of fines can be replaced with equivalent animals, such as cattle (*hapi*) and horses (*djara*) (Jaya 2016; Krisnawan 2015; Missa 2010)

SETTLEMENT PROCESS

WHEN there is a customary violation of the act of adultery, the family reports to the people in *Kolo Tede*. The people in *Kolo Tede* are assigned as *Opas*/ police. When reporting to *Kolo Tede*, clothing and items used during adultery must be brought to *Opas*. When they were taken to *Mone Rue* in *Dhara Roe* (house of rebellion) the two perpetrators of adultery were taken in a procession while being pelted with dried *lontar* seeds or commonly called *saboak* (*wokeke*) and *nitas* (*wue kepaka*) until they arrived at the door *Dhara Roe*'s house fence. Throwing with *wokeke* and *wue kepaka* is a punishment that must be followed so that the actions of the perpetrators do not be followed by other people. When arriving at the *Dhara Roe* yard there was a monument. The two perpetrators were told by *Kenuhe* to sit on the monument and be given drinking sugar water which had been stored in *Dhara Roe* for decades (*Ei Nahu Gumi*) (Pigalao 2004; Dake 2015).

The provision of sugar water that has been stored for decades has the purpose of remembering their actions, as well as the agreements discussed during the traditional marriage (*kenoto*). During their detention in *Dhara Roe*, the 2 perpetrators of adultery will be given a sentence to process the customary land in *Dhara Roe*. The tool used to loosen the land is not using *tajak* (*pengo'o*) as the local community usually cultivates the land, but uses *iron gali* (*uda*) [the traditional land is usually processed by people who live in *Dhara Roe*]. This punishment was carried out with the aim of self-reflection and asking forgiveness from the ancestors. The length of the prison period depends on the agreement between *Mone Rue* and the family of the two perpetrators of adultery. They will continue to be held in *Dhara Roe* until the ransom is handed over by the family to redeem the perpetrator. In other

words, the length of the prison period depends on how quickly the family can obtain and hand over the ransom. The type and number of ransom animals have been established for a long time before the people of Sabu recognize letters, so they cannot be negotiated (added / subtracted). The ransom that has been decided in customary law is 1 male dog, 1 rams, 1 female lamb, 1 male pig, 1 female pig, 1 male rooster, 1 female hen, 1 male buffalo, and 1 female buffalo (Pigalao 2004; Dake 2015).

SABU CUSTOMARY SANCTIONS

SANCTIONS according to the Sabu are a reward that must be received by someone what if they violate customary provisions. Sanctions applied in the Sabu customary law are a process of restoring a condition and paying attention to the conditions of the parties. Sabu's traditional sanctions include, fines, compensation, being ostracized, thrown, paraded around the village, working on customary land, and drinking sugar water for decades. The type of fine above is a guideline for the Customary Assembly in resolving a customary problem. Fines are given to perpetrators who have committed an act of harming the public, family or personal person in the form of material or moral loss. With fines, it is expected that the community's losses will be recovered. Compensation is a sanction that burdens a person who has committed acts that harm the community. Excommunicated sanctions are imposed because they have repeatedly harmed and embarrassed the public. Thrown, paraded, and worked on customary land and drinking water syrup for decades is a sanction that is applied in immoral issues such as adultery. Sanctions are given wisely because this sanction must be in accordance with the actions taken. Because sanctions are applied in addition to giving a reddish effect also to restore peace and harmony in society (Pramesti 2008; Raharjo 2010; Rizal 2017).

The purpose of customary sanctions to follow the philosophy of the indigenous people of Sabu loves family relations so that the settlement of adat disputes is solely to restore the peace and harmony of society, even though they love family relationships someone who has committed adat violations must be punished according to the rules. There is a way of life that expresses the expression in sanctioning based on justice that giving sanctions is not to blame someone but to improve the situation to be better "*pemola rujhara do kelekku*" which means to straighten a tortuous road. The application of sanctions must be in accordance with his actions "*cellphone dhui miha nehala ludu*" which means that he must be responsible for the actions committed. Customary law sanctions regarding the issue of adultery cannot be tolerated because adultery is a problem that can destroy the integrity of the household in accordance with the philosophy of the Sabunese who love family relationships but if the relationship is damaged by a shameful act the family is severely punished. So that it becomes an example for others so as not to

tarnish the good name of the family (Rizal 2017; Susiatiningsih 2006; Upara 2014).

Fines according to the Sabu are the price of a violation committed. The phrase giving a fine must be in accordance with his actions. The fine in The Community of Sabunese is a fine in the form of animals. Fines in the form of animals are applied if a person commits an act that is detrimental and disturbs tranquility and comfort in society. The application of fines in the form of animals consists of compensation fines, penalties to cover shame and fines that are not exceptions. Compensation fines mean fines applied if someone destroys ownership from someone in this case land grabbing, damage to crops in the garden and others. This fine is applied with the aim of maintaining peace in society. The fine closes shame that the fine is applied because someone has committed an offense that defiles the sanctity of the village (Upara 2014; van Klinken 2014; Zulfa 2010).

THE FUNCTION OF CUSTOMARY INSTITUTIONS RELATED TO THE SETTLEMENT OF ADULTERY

IN CONNECTION with the settlement of the adultery issue that has the right to complete is the Adat Council which holds the title Mone Rue, Mone Rue has the right to complete adultery if the two adulterous couples have their own spouses or have conducted an adat marriage. Mone Rue was assisted by Kenuhe or commonly regarded as Opas in The Community of Sabunese but did not forget to report the issue of adultery to Deo Rai. If the act of adultery is carried out by someone who is married to someone who is not married then the unmarried person is handled by a representative from Mone Rue, Leo Ko, while the married person is still brought before mone rue. Mone Rue was in charge of conveying the rewards or sanctions applied to the adulterous couple who were brought to Dhara Roe, in addition to conveying sanctions and fines, Mone Rue was in charge of overseeing all the processes both during the sentence and when paying fines. Payment of fines in the form of animals hurry animals that are really healthy, as evidenced by the examination by Kenuhe, if the condition of the animal is not healthy then Kenuhe will report to Mone Rue and the animal must be replaced. When all customary arrangements have been carried out Mone Rue along with other Customary Councils are tasked with advising adulterous couples not to commit the same mistakes again, in addition to the advice given to maintain the integrity of each household even though this adultery is a matter that cannot be tolerated but with sanctions and fines can stabilize the relationship between families so that the act of adultery can be forgiven.

1. Sabu Obedience to Sabu Customary Law

LEGAL obedience according to the Sabunese is obeying the rules that have been established together for a long time by traditional elders. Legal obedience is not free from legal awareness, and good legal awareness is law obedience, and good legal unconsciousness is disobedience. Statutory observance must be juxtaposed as a cause and effect of legal awareness and obedience. Obedience of the Sabunese has the characteristic that the law is obeyed not because of fear of sanctions or fines that will be given by customary law but that obedience arises because the Sabunese feel that customary law contains values that are in accordance with the culture and lifestyle of the Sabunese who hold family. Obedience is also inseparable from the morals possessed by the Sabunese, obedience is an obligation that must be carried out but for the Sabunese, obedience is not an obligation but a lifestyle that is in accordance with the values that live in The Community of Sabunese and beliefs rooted in the heart so able to control the behavior and actions of adherents from negative traits. Besides that, there are also because materially and formally, customary law comes from The Community itself, or is the will of the group. Therefore, the legal compliance will remain as long as the group's will is acknowledged and upheld jointly, because this group's will causes the moral obligations of the Community to arise and be maintained.

Legal awareness and compliance, there is a fairly fundamental difference between customary law and positive law. The awareness of indigenous peoples towards good and bad norms is voluntary as a result of moral obligations. Basically customary law is obeyed because customary law comes from The Community itself. The consequence is that people must obey these rules, in accordance with the soul and sense of justice that is owned by the community, and has legal consequences which if not adhered to will cause sanctions for the perpetrators.

2. Customary Behavior of Sabunese

CUSTOMARY behavior is an activity or activity of indigenous peoples which is a response to the customary symptoms that occur (Astuti 2015; Chirayath, Sage, Woolcock 2005). Customary symptoms include the rainy season (performing a ceremony in the rainy season which means thanksgiving), ceremonies in the dry season (ceremonies asking for rain), customary violations (repellent ceremony or disgrace) and others. The customary behavior of the Sabunese as in the principle of life of the Sabunese is to maintain the integrity of kinship or kinship, so the customary behavior is divided into:

1) Customary behavior to understand each other

It is the behavior shown at the time of solving the problem that the Sabunese know what is happening, how to resolve it in the best way and be familiar with the customs of the Sabunese.

- 2) Customary behavior for mutual trust
Customary behavior to trust each other means the behavior shown when resolving problems, the people of Sabu entrust the whole solution to the problems faced by indigenous elders.
- 3) Customary behavior to help each other
Customary behavior to help each other means that the traditional behavior shown by the people of Sabu in solving problems is not only the responsibility of a person but a joint responsibility, so to resolve the need for cooperation.

The above behaviors stated that in resolving a problem, the Sabunese cling to the principle of kinship, namely joint ownership so that if a problem occurs, the problem is resolved together. This is because what is experienced by the people of Sabu is only understood by the people of Sabu and resolved by the Sabunese themselves in this case the cooperation between indigenous elders and the community.

THE FACTORS OF SOCIETY PREFER TO SETTLE ADULTERY BY CUSTOM

THE SETTLEMENT of adultery by custom is a priority for the people of Sabu, because the people of Sabu feel that the settlement process is traditionally very familiar with the traditions of the Sabunese, as well as the justice and legal certainty of the people of Sabu. Familiarity means that life in The Community of Sabunese is a unity that cannot be separated because The Community of Sabunese adheres to a kinship system based on lineage and region. Each lineage has a system of problem solving that is made and agreed upon so that the Sabunese are more familiar with the settlement system traditionally not with the exception of adultery. There are also factors that cause the people of Sabu to choose to complete adultery based on customary law:

- 1) Heavy penalties and penalties
Heavy penalties applied in sanctions against perpetrators of adultery were chosen because the Sabunese considered that by giving heavy penalties the perpetrators of adultery would not repeat the act of adultery by themselves. This is evidenced by the expression "*lai ju, lai bhale pa no*" meaning that the punishment applied in accordance with the action. The punishment of committing adultery is severe because the Sabunese consider the act of adultery to be detrimental to the kinship in the family as evidenced in the phrase "*pemekae ama namone*" or embarrassing the family.
- 2) The familiar settlement of adultery in Sabu customary law
"*Lai no lai in lemma*" is an expression that shows the familiarity of customary law with The Community of Sabunese which means that the

problem is our problem as well so it must be resolved by us too. Customary settlement is very much in accordance with the prevailing customs and in accordance with the principles of the Sabu's life that is family. This means that in the settlement of the Sabunese do not regard the perpetrators as enemies or opponents but as their own children, grandchildren or relatives, this is evidenced by the expression "*pedu rupara due*". Literally it means connecting two palm leaves from two trees that grow close together. The leaves of the *lontar* tree symbolize two people (male and female large families symbolized by palm trees. If there is a problem and then one who finishes it is the family itself. Because the Sabunese adopt a patrilineal kinship system so the relationship between the Sabunese is very close. that can solve the problem fairly in the family of Sabunese is the family itself.

3) The context of legal certainty according to the Sabunese

The views of the Sabunese on the legal certainty in the Sabu customary law is that an offense must be punished not allowed, but must look at the customary provisions that apply. Although not written, legal certainty according to the Sabunese is the observance of The Community against the customary law itself. Legal certainty is also according to the Sabunese that a person is ensnared by a customary dispute in this case adultery. then the adulterer who is married must pay a fine including 9 (nine) animals. Nine animals are fines that absolutely must be paid with the same value. The value of these fines is considered by the people of Sabu to contain a certainty, although it is dynamic, but the fine value has never changed. The phrase "*nadu we do tao hala pemaja nga wolo uku rai*" contains a legal certainty which means anyone who does wrong still faces customary law. In addition to the value of fines, legal certainty in The Community of Sabunese also does not consider one's status in applying customary law.

4) Legal justice according to the Community of Sabunese

Justice according to the people of Sabu is a condition that shows a truth about a thing. The people of Sabu consider justice to be an act that must be accounted for before the Almighty. The phrase "*lai ju, lai bhale pa no*" which means what is done is also to be received, the purpose of the phrase is that in applying the punishment must be in accordance with the actions taken, this is the principle of justice adopted by the people of Sabu. Justice in The Community of Sabunese can create a balanced situation, in addition to creating balance in the Community of Sabunese, justice is also a way to reconcile the parties to the dispute.

CONCLUSION

BASED on the description described in the previous chapters, Authors emphasized that the process of the customary settlement in the case of adultery is chosen because customary law contains values that are in accordance with the behavior and habits of the Community of Sabunese, certainty and justice in accordance with the customs that apply in the methamphetamine society, the impact of the settlement process which ends not divorced and settlement pattern that prioritizes family relationships. Based on the research conducted by the authors on the pattern of settlement of adultery cases according to Sabu customary law, the pattern that emerges in this settlement is a pattern of family settlement consisting of the nature of preventing and protecting every member of The Community and aiming to improve the original condition which does not lead to divorce as a pattern of settlement according to positive law.

Authors suggest that it is expected that the government can adopt customary law as a regional regulation in order to avoid the polemic between customary law and state law, so that in the settlement process it does not ignore state law. The Sabu customary law community is expected to be able to maintain the customary law and existing values as a means in the settlement process of customary disputes that occur. The Community is expected to be able to provide teaching to the next generation regarding the values that already exist in the methamphetamine society so that the prevailing customs and rules can be maintained from generation to generation.

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