



REVIEW ARTICLE

SETTLEMENT OF HUSBAND-WIFE AFFAIRS CASE ACCORDING TO CUSTOMARY LAW IN MEMPURA DISTRICT, SIAK SRI INDRAPURA REGENCY

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ABSTRACT

Customary law is a rule of law that has been passed down from generation to generation in an indigenous community. Like the rule of law in general, customary law also has a dispute resolution mechanism, one of which is the settlement of disputes that occur in the household due to infidelity committed by either husband or wife. The community in Mempura District still respects and implements existing customary law, especially those that regulate problems in the family. Penghulu and traditional leaders also play a role in resolving infidelity cases that occur in the community. However, not all infidelity cases are resolved through customary law. The purpose of this study was to determine the extent to which customary law plays a role in resolving infidelity cases in Mempura District, Siak Sri Indrapura Regency and why not all people are willing to resolve infidelity cases through customary law. The research method used is sociological legal research, which is looking at the implementation of the rule of law in society. Data collection techniques were conducted by interviewing traditional leaders. From the results of the study, it was found that the cheating party was given a traditional fine in the form of one goat and a ceremony was carried out as an effort to reject the reinforcements that would occur in the future. This settlement through customary law has a weakness, namely the decision of traditional leaders does not have binding power, so its implementation is highly dependent on community compliance. The limitation of this research is in the Mempura District, Siak Regency. Research on this matter has never been done before.

KEYWORDS

Affairs, Customary Law, Husband and Wife, Mempura District, Traditional Leaders (Pemuka Adat)

1. INTRODUCTION

Good law is law that is in accordance with the living law in society, which of course is also appropriate or is a reflection of the values that apply in that society. Therefore, law and society have a very close relationship and influence each other, so that the law as an institution that regulates human life in order to create order in social life, which in fact is not autonomous. The dimensions of local wisdom of customary law, which are based on cosmic, magical and religious thoughts are correlated with the sociological aspects of the perspective and culture of the Indonesian people (Elmayanti, 2018).

Recognition of customary law paragraph 2 Article 18B of the 1945 Constitution states that, the State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law (La Syarifudin, 2019).

Basically, customary law community units are formed based on three basic principles, namely genealogical, territorial, and/or genealogical and territorial combinations. What is regulated in the law is the customary law community unit which is a combination of genealogical and territorial. In this regard, the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia (Jimly, 2019).

The actions of civilization and modern ways of living, in fact, are unable to eliminate the customs that live in society, what is seen in the progress of the times is that these customs adapt to the circumstances and the will of the times, so that the customs become eternal and remain fresh. Customary law is a law that grows in Indonesian society, its form is in the form of legal rules that arise and grow within and caused by the association of human life. However, the whole rules of customary law arise in the dynamics of human relations, in the form of the association of human life (Djaren, 1996).

The Indonesian people, especially those who live in villages far from urban areas, are strongly influenced by their natural surroundings. The nature of people's minds connects the real and the unreal, between human power and supernatural powers, between human law and God's law. The realm of thought includes the principles of divinity, humanity, unity and togetherness, democracy and agreement as well as justice and society (Hilman, 1984).

One of the areas of customary law is Marriage Law or Marriage. Marriage or marriage according to the term is an agreement between two people of different sexes to obtain the rights and status of halal accompanied by the terms and pillars that have been regulated by Islam (Djamaan, 1993). According to Moch. Anwar marriage is a contract between a prospective husband and a marriage guardian which guarantees it is legal to have intercourse between his wife and husband with the sentence marriage or marriage (Moch. Anwar, 1981). Marriage or marriage is an inner and outer bond between a man and a woman to live together in a household ark and to produce offspring, which is carried out according to legal provisions (Zikri, 2019).

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Rights and obligations between husband and wife are rights and obligations that arise because of a marriage or marriage between them. The rights and obligations of husband and wife are regulated in articles 30 to 36 of Law Number 1 of 1974. As for the rights and obligations of husband and wife, we can see in article 30 of the Marriage Law no. 1 of 1974 which reads as follows: "Husband and wife bear a noble obligation to uphold the household which is the basic foundation of the composition of society" (Laurensius, 2013).

With the existence of husband and wife marriage, an obligation is placed on a reciprocal basis, where the man as the husband obtains certain rights along with his obligations, and vice versa, the woman as the wife obtains certain rights and obligations. The husband and wife have an obligation to be loyal to each other, help each other and help for the smooth running of the household ark they are building (Laurensius, 2013).

One of the causes of disputes or disputes in marriage is due to infidelity. Infidelity is a relationship between individuals, both married and unmarried men and women, not their partners. If you relate the occurrence of an infidelity committed by either the husband or wife, the party who is harmed or hurt as a result of the infidelity will usually feel angry, disappointed, hurt, experience physical, social, or psychological disorders, and an attitude of distrust between one another so that can cause squabbles, disputes, and quarrels in the household continuously and are difficult to reconcile (Suhardi, 2016).

Customary law plays a role in resolving infidelity problems, in order to purify the family and there will be no filing for divorce, so that it can avoid these negative impacts in the hope that a good relationship can be restored with the marital partner (Suhardi, 2016).

Dispute resolution in customary law communities is based on the view of life held by the community itself. A view of life is an objective view of the people in society about what and how the world and life are. The way of life of indigenous peoples derived from values, mindsets and norms has given birth to the characteristics of indigenous peoples (Elmayanti, 2017).

Customary law communities prioritize dispute resolution through deliberation which aims to create peace in society. The deliberation route is the main route used by indigenous peoples in resolving disputes, because in deliberation a peace agreement can be made that benefits both parties. The parties forgive each other and are not in a hurry to bring disputes through state courts, so that good and harmonious relations are maintained between the parties, because essentially the balance in society that is disturbed due to disputes or disputes can be restored to its original state (Wayan and Abdul, 2018).

In particular, in this study, a review of the Customary Law of the Siak Sri Indrapura Malay Indigenous Community. The Malay indigenous community is one of the indigenous peoples in Indonesia and what is meant by the Siak Sri Indrapura Malay indigenous community is a group of people who unite themselves in a harmonious mingling, then declare their group as the Siak Sri Indrapura indigenous community and use custom, culture and the law of the Siak Sri Indrapura indigenous people in a conscious and sustainable manner.

The application of customary sanctions against deviant behavior in the social order of the Siak Sri Indrapura indigenous people is still being cultivated. The existence of customary law is still maintained by the people of Siak Sri Indrapura because the settlement of cases through customary law always prioritizes the principle of peace, based on the principle of deliberation and consensus (Nabela, 2016).

2. LITERATURE REVIEW

Etymologically, adat comes from Arabic which means habit. So etymologically, adat can be defined as an act that is done repeatedly and then becomes a habit that is fixed and respected by people, so that habit becomes a custom. Customs are habits that grow and are formed from a community or area that is considered to have value and is upheld and obeyed by the supporting community (Dominikus, 2011).

Customary law is basically the entire legal regulation that contains the customary provisions of the entire Indonesian nation, most of which are unwritten laws, in their diverse circumstances considering that the Indonesian nation consists of hundreds of ethnic groups, each of which has its own customs based on each other's view of life (Ridwan, 1989).

Customary law in Indonesia has characteristics and characteristics that are different from other laws. Customary law is able to meet the needs of the community that is functionally religious so that customary law fulfills a social function or social justice (A Suriyaman Mustari Pane, 2014). Thus,

society and its members carry out these normative commands without seeing them as a coercion but because of the assumption that these commands are what they should be (Rotie, 2002).

Van Vollenhoven stated that what is called customary law (*adat recht*) is *dat samenstel van voor inlanders en vreemde oosterlingen geldende gedrageregels, die eenzijdig sanctie hebben* (customary law is the entire code of conduct that applies to native Indonesians who have coercive measures and are not codified). From this understanding, there are three important things that need to be underlined in terms of customary law, firstly, customary law is the overall code of conduct for the Indonesian people; The two customary laws are all rules of behavior that have sanctions (forced efforts), meaning that if the rules are violated there are certain efforts to force the rules to be obeyed; and the three customary laws are not codified, meaning that they are not written in the form of a law book with a certain composition (Mahdi Syahbandir, 2010).

In customary law, there are four things that underlie and animate customary law, namely (Djaren, 1996):

2.1 Religious (Participierend Cosmisch)

This feature shows that the Indonesian nation as a whole believes in the existence of the supernatural world, which is beyond human power. The unseen world influences and even determines the fate of humans.

Besides the belief in the existence of the unseen world, there is also the view that the universe is a balanced whole. The whole is made up of parts. Everything that exists is a part of this whole. So, nothing is separated from the overall bond.

2.2 Communal

Communal characteristics show the view of the individual's place in social life. In this view, each individual is always seen as a member of the community. So, each individual only has meaning in his position as a member of the community. Therefore, the behavior of the individual must always be carried out in his position as a member of the community and within the framework of the unity of the community.

2.3 At That Very Moment

Each part of a unit can indeed be transferred to another unit, but in order to maintain and maintain balance, from the unit that receives the share, something equivalent to what it received must be removed to be placed in the first unit so that the balance is not disturbed at all. then the transfer of the parts of the units must occur at the same time, meaning that the events of giving and receiving must be carried out simultaneously.

2.4 Concrete

The point is that every action or desire or certain relationships are expressed by tangible objects. Customary law has living regulations which, although not stipulated in formal law, are still laws that are obeyed and supported by the people with all their beliefs that these regulations have legal force (Suriyaman, 2014).

The elements in customary law can be described as follows:

- There is behaviour that is carried out continuously;
- There is a systematic and regular pattern of behaviour;
- The existence of sacred values used in the behaviour;
- There is a decision of the customary head;
- There are legal consequences/sanctions;
- Unwritten;
- Obeyed because of propriety and authority.

In principle, customary law is the law of the people. As a people's law that regulates life which is constantly changing and developing (then) the maker is the people themselves. While custom content may be fluid and dynamic, the procedures and methods for determining content are stable.

Universal to all laws, adat is an institutional means of consensus and collective decision-making, whose balancing act is the ultimate goal of adat (Suriyaman, 2014). Therefore, customary law undergoes continuous changes through decisions or settlements issued by the community as a result of meeting and brainstorming through deliberation (Timothy, 2018).

This means that every development that occurs is always sought to have a

place in the customary law system, that in every development of society, customary law will always develop and be influenced by the newly created rules. Customary law as customary law that exists in the midst of society is used as a guide in behaving. Where to maintain the balance of the life order of indigenous peoples. If there is a customary dispute, then customary law is here to correct the inappropriate situation so that it returns to its original state.

In customary law communities, disputes that have occurred have long been resolved by deliberation and consensus through customary institutions commonly known as customary courts. Usually, those who act as judges in these institutions are traditional leaders (customary heads) and religious leaders (Hilman, 2003).

Indigenous peoples are a group of people who are bound by their customary law order as citizens of a legal alliance because of the similarity of residence or on the basis of descent (Bushar, 2003). According to Ter Haar, indigenous peoples or customary alliances have the following characteristics (Soerjono, 2012):

- The orderly unity of man;
- Settling in a certain area;
- Having rulers;
- Have tangible and intangible assets.

Determination of who is a customary law community and who is not a customary law community can also be distinguished.

- Territorial customary law community is a legal community whose membership of the community depends on whether the community resides within the area of the customary law community concerned.
- Genealogical customary law community, is a customary law community whose membership depends on whether the community belongs to the same lineage principle and is distinguished by three basic types of lineage.
- Genealogical-territorial customary law communities, are indigenous peoples whose membership must meet two conditions, namely that they must be included in a genealogical unit and must reside in the area of the customary community's legal alliance.

2.5 Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) is defined by cooperative conflict management. Thus, ADR is actually an out of court dispute resolution that is carried out peacefully. Or it can be interpreted as "a concept that includes various forms of dispute resolution options other than the judicial process, namely through legal means, whether based on a consensus approach or not" (Rahmadi, 2013).

ADR is a dispute resolution carried out by the disputing parties with or without the help of other people who will help resolve disputes or differences of opinion between the disputing parties. This ADR can only be taken if the parties agree on a settlement through the dispute resolution option. This settlement in the form of peace will only achieve its goals and objectives if it is based on good faith between the disputing parties or differing opinions to the exclusion of litigation dispute resolution in court (Afrik, 2016).

Reflecting on the history of ADR development in the country where it was first developed (United States), it is motivated by the following needs (Frans, 2013):

- Reduce congestion in court. The large number of cases that are brought to court causes the litigation process is often lengthy so that it costs a lot of money and often gives unsatisfactory results.
- Improving public order in the dispute resolution process.
- Streamlining and expanding access to courts.
- Provide an opportunity for the achievement of dispute resolution that results in a decision that is acceptable to all parties and satisfactory.

3. RESEARCH METHOD

3.1 Types and Sources of Research Data

This research is a sociological legal research, namely research in the form

of empirical studies to find theories regarding the process of occurrence and operation of law in society. Empirical studies are studies that find facts according to what happened as they are. Sources of data in this case are the Chairperson of the Siak Sri Indrapura Traditional Institute, experts and observers in the fields of law and culture, as well as village leaders from the Siak Sri Indrapura Regency Community.

The types of data sources in this study are:

- Primary data, namely data obtained directly from respondents, namely the people of Siak Sri Indrapura.
- Secondary data, namely data in the form of numbers, tables, documents, notes, report books, both the main problems studied, as well as monographs, districts, sub-districts and villages. Data that includes official documents, laws and regulations, books, research results in the form of reports, which are relevant to the research conducted.
- Tertiary Data, Data that supports primary data and secondary data such as language dictionaries, encyclopedias, legal terminology.

3.2 Data Collection Techniques

The data collection tool used in this study was an interview, namely direct question and answer with respondents which was carried out in a structured manner, where the interviewer had prepared in advance a list of questions to be submitted to the respondent.

3.3 Data Analysis

After the data is collected through interviews, an analysis of the data is carried out using qualitative analysis, namely a description of the collected data by not using numbers but based on laws and regulations and legal expert opinions, then the researcher explains clearly and in detail through data interpretation. by linking the data link with one another and analyzed based on legal theory as well as applicable legal provisions and expert opinions. The data that has been collected is re-examined and edited, then processed by grouping it according to its type and nature.

This research study focuses on the practice of the Dispute Resolution Model for Customary Violations in Siak and what values can be preserved for the Malay community in the distribution of customary inheritance. Then, conclusions are drawn in an inductive way, namely drawing conclusions from things that are specific to things that are general.

4. FINDINGS AND DISCUSSION

Dispute resolution can be carried out in several ways, basically the existence of a dispute resolution method is a human existence itself. With all the advantages and disadvantages that God has given to humans, it brings humans into various conflicts, both with other humans, their natural environment, and with themselves. But always trying to find a way to solve it.

Dispute resolution can be done through two processes. The oldest dispute resolution process is through the litigation process in court, then the dispute resolution process develops through cooperation (cooperative) outside the court. The litigation process produces an adversarial agreement that has not been able to embrace common interests, tends to cause new problems, is slow to resolve, requires expensive costs, is unresponsive and creates hostility between the disputing parties.

Meanwhile, through an out-of-court process, a win-win solution is reached, the confidentiality of the parties' dispute is guaranteed, delays caused by procedural and administrative matters are avoided, and the problem is resolved comprehensively in togetherness and maintains good relations.

A group of researchers put forward a theory of dispute resolution called the theory of dispute resolution strategies, namely contesting, which is trying to apply a solution that is preferred by one of the other parties. Second, yielding is lowering one's own aspirations and being willing to accept the shortcomings of what is actually desired. Third, problem solving is finding a satisfactory alternative from both parties. Fourth, withdrawing (with drawing) is choosing to leave the dispute situation both physically and psychologically. The fifth is silence (in action) that is not doing anything.

Legal anthropologists express their opinions on ways to resolve disputes that occur in society, both in traditional and modern societies. Laura Nader and Harry F. Todd, explain how to resolve disputes in society, including, namely, lumping it, avoidance, coercion, negotiation, mediation,

arbitration and court (adjudication).

Van Vollenhoven argues that the scope of customary law is as follows:

- Forms of customary law communities;
- About Personal;
- Government and judiciary;
- Family Law;
- Marriage Law;
- Inheritance Law;
- Land Law;
- Accounts payable law;
- Offense Law;
- Sanction System.

Ter Haar put forward the discussion of customary law, namely:

- Community Governance;
- Land rights;
- Land transactions;
- Transactions in which land is involved;
- Accounts Payable Law;
- Institution/Foundation;
- Private law;
- Family Law;
- Marriage law;
- Offense Law; and
- Effects of the past.

Meanwhile, Soepomo stated that the division of customary law was:

- Family law;
- Marriage law;
- Inheritance law;
- Land law;
- Accounts payable law; and
- Law of infringement (Yulia, 2016).

In such circumstances the party who feels offended will file a divorce application or a divorce suit to the competent court. In fact, in the case of infidelity, one should not immediately make a decision to divorce unless in an adulterous affair. The problems that have been described above, even though the occurrence of ordinary infidelity certainly raises the human mind, must feel a sense of suspicion of having committed adultery, and result in disharmony in the household. This is very influential in family life (Suhardi, 2016).

Broadly speaking, cheating has negative impacts, namely:

- The culture of adultery will increase;
- The wave of abortions is getting bigger;
- The divorce rate will increase;
- Disorganized family;
- Children without parental love and neglect; and
- The revenge that resulted in the murder of a lover.

Siak Regency is a regency in Riau Province, Indonesia. Previously this area was part of the Siak Sri Indrapura Sultanate. As a royal city, Siak Sri Indrapura is included in the center of the development of Malay culture, in which there are historical relics of the Siak Palace, the High Density Hall, the Malay Traditional Stage House, the Siak Weaving Craft Center, the Tomb of the Siak Kings, and also the Dutch Fort House.

At the beginning of Indonesia's independence, Sultan Syarif Kasim II, was the last Sultan of Siak to declare his kingdom to join the Republic of Indonesia. Then this area became the Siak Kewedanan area under Bengkalis Regency which later changed its status to Siak District. In 1999, its status was increased to Siak Regency with its capital Siak Sri Indrapura.

Siak Regency was formed based on Law Number 53 of 1999, State Gazette Number 181 of 1999 with the capital city of Siak Sri Indrapura. Initially, Siak was an area of the Siak Council in the form of a sub-district under Bengkalis Regency, until finally Bengkalis Regency was divided into three regencies, namely Bengkalis Regency, Siak Regency and Rokan Hilir Regency. This expansion resulted in an increase in the status of Siak District to Siak District.

BPS (Central Bureau of Statistics) Riau Province noted that in 2019 there was an increase in the number of divorce cases resolved by the Court. In Siak Regency, in 2018 there were only 8 divorce cases, but in 2019 it increased sharply to 1161 cases.

This significant increase is certainly a concern in itself, considering that in divorce cases it is not only husband or wife who are victims, but children are also vulnerable parties to become victims, such as being separated from one of their parents.

Mempura is one of the sub-districts in the Siak Sri Indrapura Regency. The majority of the population living in Mempura District is Malay and Muslim. In the daily life of the people, the people of Mempura still closely adhere to the traditions and customary laws that apply in their area. In particular, customary law is related to problems in the family.

The community still applies customary law to resolve the infidelity that occurs. Customary leaders have a big role in resolving the problem of husband and wife infidelity, before the case is resolved through the courts (state law). The sanction given is in the form of one goat for those who cheat and a ceremony is held in the village as a form of refusal for reinforcements for the village. After that the husband and wife made peace and the dispute was over. Customary law is still being implemented in the community to resolve cases of husband and wife infidelity. Meanwhile, Traditional leaders (pemuka adat) act as judges. The fine given by the cheating party is not only a sanction, but also a form of refusing reinforcements (tolak bala).

The event of rejecting reinforcements is also known as the "timbang masalah/weigh the problem" ceremony. The purpose of this ceremony is not only as a form of responsibility from the party who made a mistake, it is also an effort from the villagers so that their village is not afflicted by misfortune due to mistakes made by its citizens.

5. CONCLUSION

From the results of the study, it was found that the cheating party was given a traditional fine in the form of one goat and a ceremony was carried out as an effort to ward off reinforcements that would occur in the future, this ceremony is also called "timbang masalah/weigh the problem". The advantage of the settlement mechanism through adat is that it can avoid divorce due to cheating by one of the parties. Thus, some of the negative things that occur as a result of divorce can be avoided.

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