

REFLECTION OF THE CONCEPT OF SANCTIONS AND LAW ON THE TAMAMBALOH DAYAK CUSTOM

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Received: 26/04/2021; Reviewed: 15/05/2021; Accepted: 09/08/2021.

DOI: <https://doi.org/10.24815/kanun.v23i2.20897>

ABSTRACT

The phenomenon of sanctions encourages the custom to be labeled “Customary Law” is an interesting phenomenon to be reflected on. In this regard, it reflects on the tradition of the Tamambaloh Dayak ethnicity as social control, and provides a view on the tradition which has the sanctions. This article used an ethnographic qualitative study approach with in-depth observations and interviews. This study described the concept of sanctions on the customs and customary law of the Tamambaloh Dayak in West Kalimantan Province. The results of this study indicated that both customs and customary law in the Tamambaloh Dayak both had sanctions. Sanctions have a function as a symbol of balancing or re-harmonizing the condition of the universe that is experiencing chaos due to human actions. Therefore, sanctions are not interpreted as punishment but as a cultural process.

Key Words: customary sanctions; customary law; social control; dayak tamambaloh.

INTRODUCTION

Several references mention that customary law is a term used by the Dutch to refer to the customs found in the tribes in Indonesia (Syahbandir, 2010; Sulaiman, 2017; Bedner and Arizona, 2019). This was also undertaken by the colony in several regions of the world, such as in Southern Africa, the colonies had presented legal pluralism in the society. Diala, (Diala, 2017) argues that before the arrival of European colonizers, the indigenous people of southern Africa had a normative system that had been carried out and passed down for several centuries. The same thing is also found in Albania, as mentioned by Joireman, (2014) that the existence of customary law becomes

legal pluralism as a post-colonial product. Other cases are also found in Norway, Canada, Australia and Zealand, customary law has become a pluralistic phenomenon and the reactualization of customary law has offered legitimacy to claims to cultural autonomy and strengthened politics (Svensson, 2003). In the Aboriginal population in Australia, customary law is also a phenomenon of legal pluralism which is expressed as an artifact of the colonial regime and the administrative regime of indigenous peoples. (Weiner, 2006).

Law scholars, especially Dutch scholars, have an interest in identifying the customs and habits of the ethnic groups of the Archipelago. They have distinguished customs that contain sanctions from customs that do not have sanctions. They give various names to customs that contain sanctions (Sulaiman, 2017; Sulastriyono and Pradhani, 2018; Sumanto, 2018). Salmon Keyzer and Van den Berg call it *Godsdientige Wetten*, Snouck Hurgronje calls it *adatrecth* or some call it adat law (von Benda-Beckmann, 2019). The Dutch have provided a complex description of the rights and obligations that bind history, land, and law (Kusumaryati, 2019), so that customary law is not something foreign to the Indonesian people (Bahar, 2008), such as the application of customary law in civil cases in West Sumatra (Benda-Beckmann, 1982; Jayus, 2019), and, *awig-awig* in Balinese society (Budawati, 2016; Sihotang, 2019).

In the archipelago, customary law began with the interest of legal scholars, especially Dutch scholars, in identifying the customs and habits of the archipelago's ethnic groups. They have distinguished customs that contain sanctions from customs that do not have sanctions. They give various names to customs that contain sanctions (Sulaiman, 2017; Sulastriyono and Pradhani, 2018; Sumanto, 2018). Salmon Keyzer and Van den Berg call it as *Godsdientige Wetten*, Snouck Hurgronje calls it as *adatrecth* or some call it as customary law (von Benda-Beckmann, 2019). The aspect of sanctions on "custom" makes the custom categorized in the legal aspect. Snouck Hurgronje through the concept of *adat-recht*, divides tradition into 2 categories, namely tradition with legal consequences and custom which has no legal meaning. (Koentjaraningrat, 1958).

Similarly, Van Vollenhoven also distinguishes rules of behavior that have sanctions (hence “law”) and behavior that does not contain sanctions (hence “custom”) (Sudiyat, 1991:5). There are several things that need to be reflected in the process of “labeling custom into law”. In the term of customary law that was expressed by Van Vollenhoven, there is one information about the legal aspect of adat, namely “sanctions”. Van Vollenhoven uses the word sanction as a differentiating criterion between custom and customary law. It is necessary to understand that the phenomenon of sanctions in custom is not a single phenomenon so that it is not sufficient if it is formulated in one particular category. Custom contains complex values, the designation of which is not merely aimed at punishing or judging. For example, the implementation of customary sanctions to the Acehnese society which is undertaken on the principle of peace as a settlement of criminal cases with forgiveness, so it does not emerge a sense of revenge between the warring parties and can rebuild balance in society as a whole. (Safrijal, 2013). Another phenomenon is found in the Kutei custom which is accordance with discussion on the Rejang ethnicity, which is a manifestation of the belief system in supernatural powers as protectors that must be respected (Herlambang, 2012).

Referring to the idea of Durkheim on the solidarity, it links the type of solidarity in a particular society with the domination of a legal system. He finds out that societies that have legal mechanical solidarity are often repressive: perpetrators of a crime or deviant behavior will be punished, and it will avenge the collective consciousness violated by the crime; the punishment acts more to maintain the integrity of consciousness. On the other hand, in societies that have organic solidarity, law is restitutive: it aims not to punish but to improve the normal activities of a complex society (Koentjaraningrat, 1987). The same issue was also initiated by Radcliffe-Brown who asserted that the legal term as a technical term should be limited to the social control system that existed in state society, because in such a social organization there may be tools such as armed police, courts, prisons and so on. Those are absolute means for the continuation of legal life. Then, in lawless societies (primitive societies) Radcliffe-Brown explains that in such societies there are

customs and norms, which make a society seem to have an automatic obedience. Society members who violate will automatically get a strong reaction from the society, because of the small nature of the society (Koentjaraningrat, 1987:177-178).

A similar phenomenon occurs in the life of the Tamambaloh Dayak ethnicity, in Kapuas Hulu Regency, West Kalimantan. In the collective life of the Tamambaloh Dayak, the custom which legal scholars as well as the colonists consider to have sanctions, has now also been given the name “law”. The word law in “custom” is due to the “sanction” aspect of the custom, but doesn’t every custom have a “sanction”? Especially in the Tamambaloh Dayak ethnicity, in principle every custom is a guideline that regulates human life, there are consequences for every violation. In essence, every action is contained in customs, which are rooted in special concepts as a manifestation of the Tamambaloh Dayak view of the universe (world view) (Efriani, Gunawan and Judistira, 2019). Therefore, labeling the law for some of the Tamambaloh Dayak customs must go through a complete definition, by studying and revealing all the practices of life that they have. Distinguishing customs which are merely social habits from customs which are considered as law is a phenomenon that simplifies the meaning of sanctions from these customs.

Tamambaloh Dayak views that each of their behavior is contained in custom, and every custom has “sanctions”. The social life of the Tamambaloh Dayak has been regulated by customs and customary law. The traditional administrators of the Tamambaloh Dayak have documented the customs and customary law of Tamambaloh in written form, but this written document needs to be re-reflected, in order to find out the essential meaning of custom and law in this ethnic life. It seems that the concept of Law is shown as a paradox in the Tamambaloh Dayak custom. Therefore, the investigation into the legal aspects and the meaning of sanctions on the Tammbaloh Dayak custom must involve the contemporary life of this ethnic group. Past life practices and holistic conceptions of life and the world are deemed necessary to be investigated in order to find the deepest meaning of these sanctions. Using anthropological studies and approaches, this study is intended to reveal the

meaning of the word “sanctions and law” in tradition of the Tamambaloh Dayak Ethnicity. Cultural studies and everyday phenomena are the basis for reflection on the concept of “sanctions and law” in the Tamambaloh Dayak custom.

RESEARCH METHODS

This study is the result of the researcher’s research from 2018 to 2019 on the Tamambaloh Dayak Ethnicity in Kapuas Hulu Regency, West Kalimantan Province, Indonesia. This ethnicity is a representation of the Dayak Ethnicity, who have an animist belief system, live nomadic life in the forest because they are rotational cultivators and do not know letters. This research used with ethnographic qualitative studies (Creswell, 2009) and spent 14 Months research from april 2018 to june 2019 We conducted in-depth interviews (Denzin and Lincoln Yvonna S., 1994), by interviewing key informants to explore the function of custom and the process of problem solving using adat which is generally carried out by the Tamambaloh Dayak. We also explored the concepts underlying the customs and values that guided this ethnic life. The results of this interview, then we triangulated with written documents about the customs and customary law of the Tamambaloh Dayak. To support the accuracy of the information, we presented narrative texts from informants, as well as text excerpts from documents on the customs and customary law of the Tamambaloh Dayak. The results of the interviews were then analyzed using anthropological concepts that described tradition as social control in the Tamambaloh Dayak Ethnicity.

DISCUSSIONS AND ANALYSIS OF RESULTS

1) Tamambaloh Dayak in the Concept of Universal Balance

The Tamambaloh Dayak are a sub-ethnic of the Dayak of West Kalimantan. As a representation of the Dayak ethnicity in general, this ethnicity is also an ethnic group whose livelihoods are shifting fields and depend all their lives on the natural environment (Efriani, et al

2020). In their lives, these ethnic groups have culture and customs which are their ancestral heritage. For them, life and death are in the custom content or contained custom. For this ethnic group, all behavior must be in harmony and in accordance with customs and culture, and must not violate customs. This ethnic group considers that the violation of customs as a form of destruction of the balance and harmony of the universe. Tamambaloh Dayak views the universe as a harmonious and orderly life. With the concept of balance and harmony, the Tamambaloh Dayak appear as a traditional religious community. A society full of sacred and sacred things and symbolically present in various rituals. A society that accepts the existence of a supreme nature as a ruler, which reveals itself through its creation, through events experienced by humans. Events are interpreted as mystical and magical experiences, as non-intellectual experiences. Non-intellectual experience, forming an awareness of the unity and reciprocity of all things, objects and events, the experience of all phenomena in the world as a manifestation of a basic unity. Therefore the whole cosmos is sanctified, the sun, moon, earth, trees, rivers, water, rocks, hills, all of them become manifestations of the divine presence with their respective strengths.

In various rituals of Tamambaloh Dayak, it is reflected in the existence of a power that is above human power and strength. That power is a supernatural power, believed to be the creator known as '*Sampulo Padari*', *alatala* or the one who makes it. In the context of "making" it can be interpreted that the creation of the universe and its contents started from nothing or made everything from non-existence. This understanding of creation was born from the experience of the Tamambaloh Dayak people about everything around them whose existence cannot be explained by human ratios. The mysteries of the universe give rise to the belief in a transcendent existence. For them the secrets of the universe are not only from the process of existence itself, but the forces contained in it. The secrets of power in the universe encourage the birth of belief in the spirits and ghosts that inhabit the universe.

Meanwhile, humans are part of the universe that is inseparable from nature. Humans participate in forming the order of the universe, even humans are the main subject in the universe. Humans are performers of rituals, humans who experience, humans who arrange the unity. Humans can destroy order in the universe, and humans can restore order. In religious practice, humans are the main actors. Therefore, the understanding of humans is an understanding that is strung together in the understanding of nature and the supernatural. The cosmology of the Tamambaloh Dayak society which shows the interconnectedness of the elements of humans, nature, and supernatural life is built to form a universe (Efriani, et al. 2019). The Tamambaloh Dayak ethnicity argues that the universe as a harmonious order between humans and each other, humans and their surroundings, and humans and the supernatural. Humans are responsible for the order of the universe. However, human actions often break the order, it leads to the disharmony. Thus, custom appears as a balancer and control of the harmony of the universe.

2) Reflection on the Concept of Sanctions and Law on the Tamambaloh Dayak Custom

Tamambaloh Dayak ethnic customs are hereditary habits that are used as the basis for guiding, regulating and guiding the life of the Tamambaloh Dayak. Customs regulate, supervise, limit and oblige the Tamambaloh Dayak and their environment in their daily life. Customs apply to all Tamambaloh Dayaks. The highest power in custom is in the hands of Tamanggung Tamambaloh and the traditional leaders who have been appointed and determined by Tamanggung. Violation of customs is an act outside the customary rules or actions that are not in accordance with custom. Regarding violations and prohibited acts, such actions will be subject to custom. The custom of the Tamambaloh Dayak Ethnicity serves as a symbol of harmony. For the Tamambaloh Dayak Ethnicity who violates customs, whether intentionally or unintentionally, a mutually agreed custom is needed (consensus).

Dayak Tamambaloh have undertaken a written distinction between customs and customary law. In reflection on the concept of law, it appears that there are doubts in making the separation between adat and customary law in the Tamambaloh Dayak custom. Here are some parts that we think that it can represent these doubts.

a. The Custom of Marang Palulung Laki

Marang Palulung laki is an act of adultery committed by a married man with an unmarried person. Because of his actions, the husband is punished to the *maarang palulung custom* and pays *kesopan/pamalu banua*. *Marang Palulung Laki* tradition is part of the customs and not in the category of customary law, but in violation of this, sanctions are also imposed, namely paying the customary of *kesopan/pamalu banua*. In relation to paying *kesopan/pamalu banua*, in an interview with Akim (Wakil Tamanggung Tamambaloh) explained that what is meant by paying for the customary kasopanan/pamalu Banua are:

The husband is sanctioned by paying 4 kaletau amas to his wife and the husband along with his mistress pay 1 kaletau amas as a kesopan/pamalu Toa Custom and 1 chicken to be given to their sons and wife if the family already has children. If a woman (not a wife) is the cause of adultery with a married man, then the woman is subject to customary sanctions in the form of: paying the man's wife 4 kaletau amas and both paying 1 kaletau amas kasopan/pamalu Toa Custom and 1 chicken for a boy if the man already has children. (Interview. Akim. Tamambaloh, 19 September 2018).

Dealing with this fact, the researcher concluded that there was no gap between what is meant by customs and what is meant by customary law. It appeared that law was control media which in the above case called as *kaletau amas* and chicken.

b. Custom of Pambarang Banua

In the daily life, the Tamambaloh Dayak society prioritize togetherness and kinship in a safe, peaceful and peaceful atmosphere, however, there are often disgraceful actions from community members who cause chaos/commotion (*maraang sijai/mangsak*) at traditional parties and other events. The act of making trouble/commotion is carried out by someone in the form of a fight, challenging someone/some people to come down from the house to the ground/outside the house to

fight. There are also forms of action that are categorized as making trouble, such as; for reasons of being drunk, behaving shouting, cursing, threatening or acting in a way that scares residents. Such actions/actions are given to customary sanctions from *Pambarang Banua*. *Pambarang Banua* is called *the* customary *pambarang banua*, violations of the custom are given sanctions from the customary of *pambarang banua*. The two different customs that the researcher has described provide an overview that the customs of the Tamambaloh Dayak ethnicity overlap with what this ethnic group has identified as customary law. Therefore, in this paper, it is important for the researcher to describe custom as social control, which is not actually a law. Thus, the researcher presents a case of immoral acts on the Tamambaloh Dayak ethnicity, which according to the legal concept, this action has legal effect because it has sanctions. The immoral behavior is incest or what in the local vocabulary of the Tamambaloh Dayak ethnic is called *kudi'*. So that this case is close to the Tamambaloh Dayak Ethnicity, then in this presentation, the researcher uses the local word, *kudi'*.

c. Custom of Kudi/Marabor Banua

Kudi' is a human action (human) Tamambaloh which has a complex effect. *Kudi'* on the Tamambaloh Dayak causes disruption of the balance of the universe, the natural environment, the social and supernatural environment. Disruption of the balance or harmony of the cosmos can be seen in two patterns. First, that *kudi'* leads to the disruption of social life, because *kudi* is an act that contains disgrace. Second, this act of *kudi* is an act that emerges the anger of the supernatural which is formed in natural events, such as rain, floods, storms. *Kudi'* cause social disharmony as well as damage to the balance of the universe, human nature and the supernatural. Thus, the *kudi* "doers are obliged to carry out the *marabor banua* custom as an effort to create the harmony of the universe. The *marabaor banua* custom or also known as the *kudi* custom is carried out by stoning the perpetrators (*itampun*) to death. The two perpetrators were prone to each other with the position of the man above the woman, then stoned with sharp bamboo until they both died. After they both

died, one of the bodies was washed away in the river to purify the river (*panyauti Batang Sunge*) and one body was buried to purify the soil (*panyauti tana'*) (Interview with Tamanggung Tamambaloh). The *marabor banua* tradition with *itampun* or stoning is an ancestral tradition (*tau jolo custom*). This custom is in accordance with the cosmology of the Tamambaloh Dayak ethnicity who believes that the magical and cosmic powers must be in balance. The researcher needs to argue that nowadays the custom of *itampun* for *kudi'* actor is no longer known in the Tamambaloh Dayak ethnicity. As a symbol, for the sake of maintaining the balance of the cosmos, especially avoiding danger, natural disasters that can occur due to the *kudi'* custom of *marabor banua* have been adapted to today's life.

Custom of *marabor banua*, currently carried out by replacing the sacrifice of the perpetrator with a pig. *Kudi'* actors each of them give a pig for *saut banua* (purification of the village or *banua*), while in exchange for the life of the perpetrators are required to perform the *banua marabor* custom which is measured by the number of *kaletau* (size or unit of customary Dayak Tamambaloh sanctions) in the form of valuable objects such as gongs and crocks.

The custom that the researcher has described above is a custom that aims to rebalance the state of the universe in the Tamambaloh Dayak. Dayak Tamambaloh society is creative in building cultures in the form of various customs to maintain the harmony of the universe. The custom or culture created by the Tamambaloh Dayak human becomes a symbol of human closeness to nature and the supernatural to achieve a harmonious universe. In this presentation, the reader has been presented with a case regarding to custom, which legal scholars call custom which has sanctions. Allow me to speculate on this manuscript. Is it possible, legal scholars, to call the *marabor banua* custom for this incestuous act the "death penalty for the Tamambaloh Dayak customary law"? Therefore, the researcher presents the following case to provide an adequate description of custom as a symbol of universal harmony, which is not intended as a punishment.

d. Custom of Sabung Patan

To reveal the relationship between custom and what has been conveyed by Ter Taar regarding the identification of custom in relation to courts and legal decisions, the following here, the researcher describes the form of custom in decision-making on one pekar in the Dayak Tamambaloh custom. This custom is called as *Sabung Patan*. *Sabung Patan* is cockfighting carried out to test and decide on a case that usually occurs in disputes over land, fruit trees and heirlooms, or in social cases where the decision process is not certain whether an action is right or wrong. Sabung Patana is carried out to test the truth of individual's reasons or arguments for his recognition and ownership of a disputed object. Sabung Patanan is undertaken as a last resort in solving problems in the life of the Tamambaloh Dayak ethnicity. *Sabung Patan* is carried out when the dispute that occurs cannot be decided by humans, because there is no evidence or witnesses that can be used as a basis for making a decision.

The decision on *sabung patan* is absolute truth. This happens because of the sacredness of *sabung patan*. *Sabung patan* is believed to be a real form of work from ancestral spirits, especially those who are wise and experienced in leading the Banua Tamambaloh and also the spirits of *Sampulo Padari* and other souls. The truth will be shown by winning the rooster of the righteous. Before the *sabung patan* takes place, both parties to the dispute prepare their respective roosters. Before the rooster is pitted, a *mangalongan* (calling ancestral spirits) is first held, which is led by one who has been responsible for the *pangalongang sabung patan*. In *ketamanggungan* Tamambaloh, the *pangalongang* of the sabung patan ritual is the descendant of the Janau ma Bird Kiung tray, which is now followed by Baki Gunung from Paat Saujung Giling Manik. *Mangalongang* begins by summoning ghosts throughout Tamambaloh, starting from Ulak Paok in Estuary to the headwaters of the Tamambaloh river. Especially the spirits of Samagat Tamambaloh, the spirits of wise people who can decide justice. After the ghosts and spirits of Tamambaloh are

summoned, the higher spirits are summoned, namely *Sampulo*, *Tamigo*, *Talasik*, *Iponukum*, and *Iponsara*. (interview. Baki' Gunung. Nanga sunge; 2018).

Throughout the experience of *sabung patan*, until now Dayak Tamambaloh believe in the accuracy of the truth of the custom of *sabung patan*, because the power of truth does not lie in the strength of the rooster that is prepared but the absolute truth shown by the spirits of the ancestors by killing the rooster of the wrong party. For example, A Person and B Person both claim to own the same land, it can lead to quarrels and disputes. To prove who the real owner of the land is, *sabung patan* is held and who is the real owner, he will win. Victory is believed to be determined and decided by the spirits or ghosts through the rooster as a symbol. In this custom, a process of sacredness and respect for the spirits of the ancestors is presented in determining decisions for human actions. This custom again reflects the cosmology of the Tamambaloh Dayak Ethnicity, which places the supernatural as the highest thing in its cosmology. The supernatural is the observer, the omniscient and it is they who show the ultimate truth. It is clear that the source of the decision is not as intended in the judiciary.

The concept of sanctions on the Tamambaloh Dayak custom, is intended to reveal the consequences that must be borne from an action that is contrary to custom. Sanction has same meaning with the word punishment but it does not mean punishment. Sanctions as a result that are borne do not mean punishment, this is because the purpose of these sanctions is not as punishment, but as a symbol of controlling the harmony of the cosmos. Concepts like these are important to understand from an emic point of view. The concept of sanctions, in the Tamambaloh Dayak ethnicity, manifests itself in various forms. Sanctions are in the form of customs that must be implemented and paid for by customary violators. Customary sanctions can be in the form of having to perform a ritual, or giving up a sacred object, or even paying a certain amount of *kaletau*, *pati nyawa*. Sanctions can be in the form of bodily/physical sanctions, carried out by expulsion from the village or expulsion from the family and loss of rights in the kinship system. Sanctions in the form

of goods, in the form of gold, silver, gongs, tawak, crock, livestock, and money. The amount and value of the fine is calculated in units of *pati nyawa*, *kaletau*, *kaletau amas*, *garantung raa* and *saut*. *Pati nyawa* consists of 12 *kale or amas*, and 6 *kale or amas*. If it is converted to Rupiah, 1 *Kaletau* is equal to Rp. 75,000; 1 *Kaletau amas* is equal to 6 grams of 24 karat pure gold and 15 grams of ordinary gold, and the other is in Rupiah adjusted to the gold price prevailing at that time. 1 *garantung raa* is equal to IDR 45,000; *saut* in the form of 1 pig or chicken or machete, or chicken blood.

CONCLUSIONS

In the concept of balance and harmony of the cosmos, custom is the socio-cultural controller. The sanctions which contained in the Tamambaloh Dayak ethnic custom are intended to reveal the consequences that must be borne from an action that was contrary to custom. Literally, the word sanction is equivalent to the word punishment, but sanctions and laws in the concept of adat are not meant as laws or punishments. Sanctions and laws are a consequence of actions that disturb the balance and harmony of the universe, thus custom serves as a symbol of controlling the harmony of the universe. Therefore, the process of universal control or the process of maintaining this harmony is more appropriately called as custom, not punishment or sanction, so that the guilty person is rightly called being punished, not punished. Actually the characteristic of custom in resolving a case is that big issues are minimized, small problems (if possible) are eliminated. Due to basically it is not a court but an educational process. the word law to indicate adat which contains sanctions, is not appropriate if it is used to explain the sanctions contained in custom or the process of social control of the Tamambaloh Dayak Ethnicity. This is due to the Tamambaloh Dayak ethnicity argues that the sociocultural cosmos as a balance. Thus, in the opinion of the researcher, the use of concepts in a society should be studied based on the object, method and usefulness of the concept for the community concerned, so that the possibility of the accuracy of using the concept can be fulfilled.

ACKNOWLEDGEMENT

Thank you very much to Tamnggung Tamambaloh and tradition keeper and all dayak Tamambaloh communities who had become the data sources and information in this manuscript.

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