

## **Adultery Crimes From The Perspective Of Islamic Law And Customary Law In Dolok District, North Padang Lawas Regency**

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### **ABSTRACT**

*Violation of Islamic law and customary criminal law is still viewed as something that can cause disruption and disturb the consciousness of the community. The purpose of this research is to examine and analyze legally how the regulation of adultery is based on Islamic law and customary law in Dolok District, Padang Lawas Utara Regency, to understand and analyze legally the application of customary criminal sanctions against perpetrators of adultery in Dolok District, Padang Lawas Utara Regency, and to examine the authority of customary leaders in resolving cases of adultery in Dolok District, Padang Lawas Utara Regency. The type of research used is qualitative research with data collection techniques, including interviews with customary leaders in Dolok District, Padang Lawas Utara Regency. The results of this study indicate that the regulation of customary sanctions for adultery in customary law is called "appeal dila," which is a type of punishment that requires the perpetrator to slaughter a goat/buffalo/cow by inviting the community to gather and have a communal meal as a basis for seeking forgiveness for the act of adultery. The application of customary sanctions against adulterers involves punishment imposed by the customary leaders, namely Raja Panusunan Bulung and Raja Pamusuk, after a customary meeting attended by Mr Namalim (Religious Figure), Datu (Health Doctor), Pangatak-Pangetong/Rokkaya (Traditional Healers), panyujukan burger (Betel Leaf Carrier), Halakna Dihuta (Village Community), and the prepared sanctions.*

**Keywords :** *Criminal Act of Adultery, Customary Law, Criminal Sanctions.*

### **INTRODUCTION**

The existence of customary criminal law within a community reflects the life of that community. Each region has different customary criminal laws by the customs and traditions in Dolok District, North Padang Lawas Regency, characterized by unwritten or uncoded rules. The provision regarding adultery in the customary law of Dolok District, North Padang Lawas Regency, bears similarities to the concept of adultery in Islamic law, which pertains to adultery committed by individuals who are not married or in formal unions. In Islam, perpetrators of adultery are divided into two categories: pezina muhshan (adulterer who is married) and Pezina ghayru muhshan (adulterer who is unmarried and does not have a legitimate partner).

In the customary law of the community in Dolok District, North Padang Lawas Regency, customary criminal law applies sanctions such as fines, expulsion from the village, and social ostracization. The community acknowledges the validity of these sanctions under criminal law in the Indonesian Criminal Code (KUHP), as they are agreements established by customary leaders beforehand. These customary leaders are part of a customary institution, both formally and informally. In broad strokes, the implementation of customary law originates from Emergency Law No. 1 of 1951 concerning temporary measures for organizing the unity of the power structure and the procedures of Civil Courts. These customary institutions have authority within the community, both in the realm of private law and public law. They act as arbitrators in settling customary disputes and possess special authority in

enforcing criminal law. In the case of a criminal offence, investigators must first obtain approval from the customary leaders before taking action against the suspect.

Based on the author's observations, adultery still occurs outside of marriage bonds, particularly within the community of Dolok District, North Padang Lawas Regency. In terms of its effects, this situation can lead to other crimes, such as abortion and the abandonment of babies, resulting from illicit relationships and sinful behaviour. Given the above, the author is very interested in conducting research in the realm of customary criminal law, particularly in the field of adultery, under the title "Adultery Crimes From The Perspective of Islamic Law and Customary Law In Dolok District, North Padang Lawas Regency."

## **LITERATURE REVIEW**

### **Criminal Act**

The term "tindak pidana" is a translation from the Dutch term "Stafbaar Feit." The term "Stafbaar Feit" is then translated into Indonesian. Some words used by Indonesian scholars to translate "Stafbaar Feit" include "tindak pidana" and "perbuatan pidana." Meanwhile, various laws and regulations themselves use different terms to refer to the meaning of "Stafbaar Feit."

Some terms used in these laws and regulations include:

- a. Criminal event, this term is used, among others, in the Temporary Constitution (UUDS) of 1950, particularly in Article 14.
- b. Criminal act, this term is used in Law Number 1 of 1951 concerning temporary measures to organize the unity of the power structure and the procedures of civil courts.

### **Islamic Criminal Law**

Islamic criminal law's definition is similar to criminal law in general. However, Islamic criminal law is based on Islamic legal sources, namely the Quran and the Sunnah (the practices and teachings of the Prophet Muhammad). Therefore, Islamic criminal law is a legal system that is a part of the Islamic legal framework, governing criminal acts and their punishments based on the Quran and the Sunnah. Islamic criminal law is the translation of the term "Fiqih Jinayah." Fiqih Jinayah encompasses all legal provisions regarding criminal acts or wrongful actions committed by mukallaf individuals (those who bear legal responsibility) due to understanding the detailed legal evidence from the Quran and Hadith (Prophetic traditions).

### **Customary Law**

Customary law is a part of the traditions and customs of a community. Customs and traditions encompass a comprehensive concept. Customary law is non-statutory, meaning customary law is generally not written or codified. Therefore, deepening one's knowledge of customary law requires rational and emotional understanding when viewed from a legal expert's perspective. Upon closer examination, one will discover regulations within customary law that carry sanctions, where there are rules that must not be violated, and if violated, can be prosecuted and subsequently punished.

## **METHODS**

The type of research used is empirical research. Empirical research is used to analyze the law as seen as the behaviour of society patterned in societal interactions and relationships. The research is located in Dolok District, North Padang Lawas Regency. Primary data is obtained directly through interviews and field surveys in Dolok District, North Padang Lawas Regency. Secondary data refers to information gathered from official documents, books related to the research object, and research findings in reports, theses, dissertations, journals, and legal regulations. Tertiary legal materials provide guidance and explanations for primary and secondary legal materials, such as dictionaries, magazines, newspapers, internet sources, scientific journals, and encyclopedias. Data collection methods include documentation and interviews. Data analysis is conducted through data examination and arrangement.

## **RESULTS AND DISCUSSION**

### **Regulation of Customary Criminal Sanctions for Adultery Offenders in Dolok District, North Padang Lawas Regency**

The act of adultery in customary law in Dolok District, North Padang Lawas Regency, is not limited to sexual intercourse between unmarried individuals or those who are not mahrams. It emphasizes more on the violation of prevailing moral norms. The social interaction between young men and women in customary law in Dolok District, North Padang Lawas Regency, is governed by the concept of "martandang." The concept of "martandang" involves the interaction between young men and women during the day or night, either in their village or another village. Conduct in these interactions should be respectful and courteous. They should act and speak politely. There must be a supervisor in these interactions, preferably an older woman. If a man and a woman are alone in specific places or inside a house, and they are not married or mahrams, it can be considered adultery, as it violates the moral norms in the community of Dolok District, North Padang Lawas Regency.

The customary legal system in Dolok District, North Padang Lawas Regency, determines whether adultery has occurred based on the concept of "kepantasan" or appropriateness. If a woman and a man who are not mahrams close a door, it can be categorized as inappropriate, and this impropriety serves as formal evidence of adultery. In the customary law of Dolok District, North Padang Lawas Regency, it is not necessary to prove whether sexual intercourse has occurred between a man and a woman who are not mahrams; instead, the emphasis is on the act that has violated moral norms and the measure of appropriateness in the customary community. The customary criminal sanction against adultery offenders in Dolok District, North Padang Lawas Regency, is in the form of "Sappal Dila," a type of punishment that requires the offender to slaughter a goat or a buffalo/cow, inviting the villagers to participate in a communal meal as a gesture of apology in front of Harajaon, Hatobangon, religious scholars, and customary members of Dalihan na Tolu.

Sappal Dila sanctions include several types: Uhum Horbo Mate (Sanction of slaughtering a buffalo), Uhum Horbo Mangolu (Sanction of a living buffalo), Uhum Mate

Mangolu (sanction of giving two buffaloes, one to be slaughtered and the other to remain alive), Uhum Horbo Tailpa (sanction of a buffalo and several grams of gold). Additionally, the male offender must propose marriage to the woman if there are no obstacles. If an adulterer does not comply with the imposed sanctions, they will face "bondarkon," which means they will be excluded from all activities within the customary community. It's as if they are considered no longer present. Conversely, if they wish to engage in any activity, whether in the form of "silicon" or "simulation," it cannot be carried out using the local customary procedures.

### **Implementing Customary Criminal Sanctions Against Adultery Offenders in Dolok District, North Padang Lawas Regency.**

The application of criminal sanctions against adultery offenders in a village falls under the authority of Raja Panusunan Bulung. Customary criminal sanctions in Dolok District, North Padang Lawas Utara Regency, have undergone several changes from their original form. The application of customary criminal sanctions in Dolok District, Padang Lawas Utara Regency, is only applied to certain types of criminal offences, specifically complaint-based offences. As a result, sanctions in the form of "pasung" (restraint) and "hula" (death penalty) are no longer enforced. The objective of customary sanctions is not to inflict suffering as seen in the Criminal Code but rather to restore, rebalance, rehabilitate, or prevent heated or impure situations incongruent with customary law. "Reaksi adat" is a term used by Teer Har to describe an effort to neutralize any disturbances that may arise from a legal violation or a situation contrary to customary law.

Law Number 1 Drt of 1951 allows general courts to investigate whether a criminal act under customary law has an equivalent in the criminal code. It also establishes a difference in the application of punishment. If there is a comparable act in the Criminal Code, then that act can be penalized with a punishment most closely aligned with the aforementioned criminal act. However, a specific sanction will be imposed if the criminal act under living law (customary law) does not have an equivalent in the Criminal Code. This may consist of a maximum of 3 months imprisonment as an alternative freedom penalty or a fine of Rp. 5000.00.- as an alternative asset penalty if the convicted person does not comply with the customary sanction imposed on them. The alternative penalty corresponds to the gravity of the offence committed by the convicted individual. Regarding the role of customary sanctions in cases of adultery, customary sanctions protect women and children born in connection with the crime of adultery. Customary sanctions against adultery in Dolok District, North Padang Lawas Utara Regency, encompass the principle of safeguarding women from irresponsible men and ensuring protection for children born from the scorn of the customary community while also providing legal certainty regarding the child's status to whom they owe their allegiance.

### **Authority of Customary Leaders in Resolving Adultery Cases in Dolok District, North Padang Lawas Regency**

Customary law encompasses the entirety of unwritten laws (Customary Law) commonly used in contrast to written laws (Unstatutory Law), which includes customary

criminal law. In customary criminal law, Customary Criminal Law (LADN) is recognized as long as it does not conflict with public interests and prevailing regulations. Conversely, in positive criminal law (written law), the role of LADN is minimal and tends to be consultative. It is not binding since institutions (agencies) are responsible for it, namely the police, prosecution, and courts (Criminal Justice System). Because not all criminal acts can be resolved through Non-Legitimacy, but only involve certain complaint-based offences, especially absolute complaint offences, where prosecution is mandatory upon the aggrieved party's complaint (victim). In the case of complaint offences, customary law plays a role in resolving them outside of formal legal proceedings.

Based on the Tumbaga Holing Letter, the authority of customary leaders in resolving cases of adultery in Dolok District, North Padang Lawas Regency, lies with Raja Panusunan Bulung as the head of the customary territory and Raja Pamusuk as the customary head at the village level. Dolok District, North Padang Lawas Utara Regency has recognized the customary leaders in Dolok District, North Padang Lawas Utara Regency, based on the Decree of the Regent of North Padang Lawas Utara Regency Number 430/300/K/2014 concerning the Formation of the Management of Customary and Cultural Institutions of North Padang Lawas Utara Regency for the Period 2016-2021. This institution is a forum for deliberations among customary leaders or Raja Panusunan Bulung in the North Padang Lawas Utara Regency.

Based on Article 5 paragraph (3) of Law Number 1 of 1951 concerning Temporary Measures for Organizing the Unity of State Power and the Procedures of Civil Courts, it states that civil substantive law and for the time being, also civil, criminal substantive law that has applied to local communities (Swapraja) and individuals who were previously tried by Customary Courts, remain applicable to the communities and individuals, with the understanding that an act that, according to living law, should be considered a criminal act, but has no equivalent in the Civil Criminal Code, is deemed punishable by imprisonment for a maximum of three months and a fine of five hundred rupiahs, as an alternative penalty if the convicted party does not follow the customary punishment imposed.

This substitution is deemed commensurate with the severity of the offender's offence. If the judge considers the customary punishment excessive, a substitute punishment of up to 10 (ten) years of imprisonment can be imposed on the defendant. This means that customary punishment that, in the judge's view, is no longer in line with the times must always be replaced as stated above and that an act which, according to living law, should be considered a criminal act and has an equivalent in the Civil Criminal Code, is deemed punishable by a penalty similar to the closest comparable punishment for that criminal act. Based on the provisions of Article 5 paragraph (3) sub b of Law Emergency Number 1 of 1951, this provision serves as the legal basis for the authority of customary leaders to impose customary penalties on adultery offenders in Dolok District, North Padang Lawas Utara Regency.

In addition to Article 5 paragraph (3) sub b of Law Emergency Number 1 of 1951, the legal basis for the applicability of customary criminal law also refers to Law Number 48 of 2009 concerning Judicial Power. Both explicitly and implicitly, Article 5 paragraph (1), Article 10 paragraph (1), and Article 50 paragraph (1) of Law Number 48 of 2009 establish the basis for the existence of customary criminal law. Article 5, paragraph (1) of Law Number 48 of 2009 states, "Judges and Constitutional Judges are obliged to explore, follow, and



understand the legal values and sense of justice that exist in society." Then Article 10 paragraph (1) states, "The court is prohibited from refusing to examine, judge, and decide a case submitted because the law does not exist or is unclear, but is obliged to examine and judge it." Furthermore, Article 50, paragraph (1) states, "Court decisions must contain not only the reasons and bases of the decision but also specific Articles of the relevant regulations or unwritten legal sources used as the basis for the trial."

Based on this explanation, it can be understood that customary criminal sanctions against adultery offenders in Dolok District, North Padang Lawas Utara Regency, have legal validity. This is because the provisions in Law Number 1 Drt of 1951 and various jurisprudential decisions of the Supreme Court recognize customary criminal sanctions against adultery offenders, namely Supreme Court Decision Number 1644.K/Pid/B/1988 and Supreme Court Decision Number 184 K/Pid/1996. Taking into account Supreme Court Decision Number 1644.K/Pid/B/1988 dated May 15, 1991, it can be seen that a person who has committed an act that, according to living law (customary law) in that area, constitutes an offence against customary law, the customary leader and customary leaders impose customary sanctions on the perpetrator. The convicted party has carried out these customary sanctions. Regarding the convicted party who has been subjected to customary sanctions by the customary leader, according to the Supreme Court, they cannot be prosecuted again (for the second time) as a defendant in the proceedings of a state court (district court) with the same charge, violating customary law, and sentenced to imprisonment according to the provisions of the Criminal Code Article 5 paragraph (3) of Law Emergency Number 1 of 1951.

## CONCLUSION

1. The imposition of customary criminal sanctions in Dolok District, North Padang Lawas Regency, against individuals involved in adultery, which is defined as social interaction between a person or a group of people, regardless of marital ties, that violates moral values, is considered an act of adultery according to customary law in Dolok District, North Padang Lawas Regency.
2. The application of customary criminal sanctions against individuals involved in adultery in Dolok District, North Padang Lawas Regency, is carried out based on the decisions of customary court sessions. In cases where the imposition of sanctions is decided by the customary leaders, namely Raja Panusunan Bulung and Raja Pamusuk, after conducting a customary court session attended by Tuan Namalim (Religious Leader), Datu (Health Traditional Healer), Pangatak-pangetong/rokkaya (Master of Ceremonies and Secretary), Panyuduhon burangir (Betel Leaf Bearer), Halak na di Huta (Village Community), as well as prepared witnesses.
3. The authority of the customary leader in resolving cases of adultery in Dolok District, North Padang Lawas Regency, is based on Article 5 paragraph (3) of Law Number 1 of 1951 concerning Temporary Measures for Organizing the Unity of State Power and the Procedures of Civil Courts. This serves as the basis for the authority of customary leaders in imposing customary penalties against adultery offenders in North Padang Lawas Regency.

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