

The Existence Of Adat Law In Settlement Of Criminal Cases (Study in Gili Trawangan Tourism Area)

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ABSTRACT

This research purpose to determine to analysys the existence of adat law in settlement of criminal cases(in gili trawangan tourism area). The type of research used is empirical, by using the method of statute approach, conceprual approach and sociological approach. The result arequalified and exist in traditional offense Gili Trawangan general public in the form of: a. theft, b. Decency, adultery/cohabiting and infidelity, c. Preservation of marine ecosystems. Forms of traditional institutions of society Gili Trawangan, law enforcement organ composed of judges/ elders, lang-lang (customs security), and front Gili youth. Settlement of criminal cases for customary offenses is based on the provisions of the customary law of the Gili Trawangan society

Keywords: Adat; Criminal; Existence; Settlement.

INTRODUCTION

Criminal cases are cases happened because of action that complies with the prohibition of the Criminal Law. Criminal acts what is result in criminal cases, delicts consist of delusions including delusional and culpic, as the form of criminal act principally can disrupt the balance in people's lives, thus the authorities are required to complete with the principle that show a sense of society justice law which they occurred.

In the embodiment of the sense of the society justice at area or community in Indonesia, settlement of cases occur in the environment comes from adat law. Adat law is a set of customary about Indonesia people who have sanctions and there are assimilate elements of religion/belief and generally unwritten.

As a law was grows and develops in Indonesia, adat law has strong root values. Essentially, it always exists and deeply inside the spirit and social behavior of the Indonesian people. Both of the spirit and character in normalizing procedures incasesettlement and the norms in criminal law.¹

¹ Anto Soemarmarman, *Hukum Adat Perspektif sekarang dan Mendatang*, Adicita Karya Nusa, Yogyakarta, 2003, p. 5

Ethical relevance of the procedures for cases settling under adat law is maintaining the relationship of people to another, and turn also the relationship between citizens with customary communities. In settlement of customary law cases always relies on resolving cases, not on deciding cases as they done in European or Western process. Thus, after settlement the case, personal relations, family kinship, and indigenous peoples still good. Whereas in European or Western law, after the dispute has been resolved by the court, the relationship between the families of those in dispute is terminated.²

Gili Trawangan Island is one of the popular tourist destinations in Indonesia. Foreign and local tourists are visiting or vacation throughout the year. Social interaction, cultural engagement, and law actin society and visitors Gili Trawangan. So as to provide space to the cultural interaction of the non-local (foreign), the enactment of national laws written positive, and also the Gili Trawangan Adat law itself.

A convergence of culture, written positive law and Adat law, often problem in addressing a social phenomenon that occurs in the community Gili Trawangan. The problems that often occur in Gili Trawangan and viral are published through mass media, which often reap the pros and cons about traditional delicts, namely the law of procession/public humiliation for perpetrators of theft in Gili Trawangan. The theft who are generally not the indigenous people of Gili Trawangan, but the perpetrators are migrant workers or visitors to Gili Trawangan. Even more viral was reported in the mass media and reaped the pros and cons when the theft were visitors/foreign tourists punished by procession.

Law enforcement are fixated on positive law written in the Criminal Code (KUHP) sourced from WVS. The written law in the Criminal Code (KUHP) is often not accordance with the value of local wisdom, indigenous delicts and sense of justice and harmony in Gili Trawangansociety. Likewise, in the process of resolving apparatus always starts with the KUHAP procedural provisions that are impractical and inefficient.

Although the use of written law has a common thing, but they did not at once be equated with increased quality of justice. It does not relate to the quality of justice, but just about a form. In addition, the use of written law also does not necessarily eliminate the work of the "law" which is not just written down, like tradition; habit or practices.

The implementation of unwritten legal values in the customs and adat law of the society to do. Settlement of disputes out of the court (non litigation) do by following customs and adat norms in the society that promote the deliberation.

The deliberation culture, as the system values that believed the spirit for each of the negotiating parties in the deliberations to resolve the conflict, for example, will seek to reduce its establishment in order to achieve a favorable meeting point for all parties, and resulted in consensus. A deliberation requires a respected figure to lead the deliberation to reach the consensus.

Based on the description in the background the problems can be formulate:

1. What criminal acts are qualified into the offenses of the Gili Trawangan indigenous people?
2. How to form customary institutions as organs of law enforcement ?
3. How is the pattern of settlement the criminal cases for customary offenses according to adat norms in Gili Trawangan institution?

² *Ibid*, p. 5.

METHOD

The type of research used is empirical³. Its function is to see the law in the real sense and examine how the workings of law in society. By using the method of statute approach, conceptual approach and sociological approach. Furthermore, the data acquired later in a descriptive and qualitative analysis, a method that reveals the facts in depth based on the scientific characteristics of individuals or groups to understand and reveal something behind the phenomenon. The qualitative approach produces qualitative data, presented in sentence form to answer the problem.

ANALYSIS AND DISCUSSION

Qualified Criminal Acts Into the Offenses Of The Gili Trawangan Indigenous People

Gili Trawangan as a tourist destination is increasingly glimpsed by tourists, has resulted in the awareness of the Gili Trawangan society on the importance of maintaining security and order and the cleanliness and preservation of the environment to develop on its own. The values of security and order in the preservation of the environment continue to grow and thrive in the community life of Gili Trawangan, thus affecting adat law and society structure of Gili Trawangan.

Traditional values that exist and ultimately manifested in *awik-awik* is about social customs and culture, security and public order, as well as about cleanliness and environmental sustainability. Arranged about the offense on traditional values so that violations of customary law in itself constitute a criminal offense customs. As for the criminal acts that qualified into the customs offense Trawangan

1. The theft

The definition of the theft in customs offenses as well as theft in the Criminal Code definition of “anyone who takes the goods wholly or partly something that belongs to someone else, with the intent to unlawfully possessed, threatened due to theft”.

That the definition of theft in the traditional law of the Gili Trawangan is not limited to theft. Because embezzlement is also included in the theft category in the concept of customary law. Embezzlement is taking goods belonging to another person in whole or in part, where the own for the goods already exists with the perpetrator, but the mastery of criminal embezzlement that occurs in the Gili Trawangan also be resolved through the Gili Trawangan customs dispute resolution mechanism.

Customary sanctions from theft offenses have been arranged in the form of *awik-awik* and then manifested as village regulations. The witnesses of theft theft in the Adat Law of Gili Trawangan:

- a. An apology to the victims and to society in general.
- b. Performers paraded around Gili Trawangan, or shown to the public, accompanied by a certain attribute as a social sanction.
- c. Perpetrators deported/not allowed to enter the Gili Trawangan area in a certain amount of time, in 2 years.

³ Bambang Sunggono dalam Ida Sara Magdalena Awi.(2012).“Para-Para Adat Sebagai Lembaga Peradilan Adat Pada Masyarakat Hukum Adat Port Numbay Di Kota Jayapura”. *Udayana Master Law Journal* . 2:1 p.6

If the act of theft has been done three times, and repeated for the fourth time, the Perpetrators banned to entering for lifetime of Gili Trawangan.

Table of Sanction the theft

Sanction	Act I	Act II	Act III
The perpetrator apology to the victims and to society in general	√	√	√
The perpetrator paraded around Gili Trawangan, or shown to the public, accompanied by a certain attribute as a social sanction	√	√	√
Perpetrators deported/not allowed to enter the Gili Trawangan area in a certain amount of time	3 Years	5 Years	lifetime

2. Decency crime

Decency in the people of Gili Trawangan includes 2 groups, namely public decency offenses and offense decency complaints. Delegation of decency referred to here is acts of decency carried out by 2 or more people on the basis of likes/wants/ same time, such as adultery and infidelity.

- a. Public decency is carried out by young people who are not married, for example zina and cohabiting.
- b. The act of decency of complaint, is the act of infidelity committed by a married person, regardless of whether they have been bound, or only one of the parties who married.

The fundamental nature of the differences in the decency offense differences in sanctions. that the provisions of adat laws/sanctions regarding 2 acts of decency, there are:

- 1) Acts against public decency, customary provisions offender shall be married.
- 2) Acts against decency complaints, the demands of family/marital concerned in. And followed by the customary sanctions, are excluded in social life, not even the actors are excluded, but also the family.

About the other decency acts such as sexual abuse/rape, completion and priority given to the police. Because in traditional institutions or indigenous security institutions (lang-lang), has no more authority to occurs chaos, especially families of the decency victims.

3. Environmental Destruction offense

Maintenance and management of the Gili Trawangan coral reef ecosystem, there are provisions regarding the procedures for managing or utilizing marine ecosystems, and how to catch fish or marine life, fishing, diving and anchor ships. The customary provisions are emphasized primarily regarding the prohibition of catching fish/marine biota by carrying out fish bombs or using nets/trawl, can destroy marine biota, damage coral reefs and other marine ecosystems.

Regarding customary sanctions and sanctions, it has been stated in the form of supervising the maintenance and management of coral reef ecosystems. And based on *Awik-awik* of the maintenance and management of coral reef ecosystems in 2001, the provisions of sanctions are;

- a. Anchoring illegally place Rp. 15. 000
- b. Fishing in prohibited zone
 - 1) Mourami Net Rp. 1. 000.000,-
 - 2) Mogong Bet Rp. 100.000,-

- 3) Planting seaweed in the prohibited zone is known as a demolition sanction
- 4) Doi zone fishing is subject to a fine Rp. 10,000, -
- 5) Removing anchors in the prohibited zone is subject to a fine Rp. 50,000, -
- 6) Diving in the prohibited zone is subject to a fine Rp. 5,000,000,

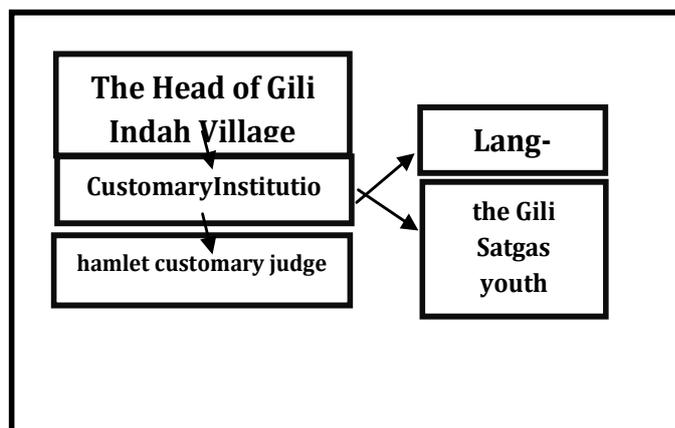
Khusus untuk tata cara penangkapan ikan, deliknya tidak terbatas pada larangan penggunaan jaring tertentu, tetapi juga termasuk pengeboman ikan. Dan ketentuan sanksinya telah diperbaharui serta turut mengikuti awik-awik bersama forum peduli pesisir Kabupaten Lombok Utara. Yaitu untuk pengeboman/potasium ikan atau penangkapan ikan dengan jaring yang dapat merusak terumbu karang dan biota laut, sanksinya sebagai berikut;⁴

Ordinances specifically for fishing, the offense is not limited to the prohibition of the use of certain nets, but also including fish bombing. And the sanctions provisions have been renewed and also participated in awik-awik with the coastal care forum of North Lombok Regency. Namely for bombing / potassium fish or fishing with nets that can damage coral reefs and marine biota, the sanctions are as follows⁵:

- 1) The first violation, the sanction is given a warning letter, and resolved by deliberation
- 2) The second violation was given a warning letter, the perpetrator was fined Rp. 30,000,000, - and submitted to the police.
- 3) Third violation, the perpetrator was fined Rp. 30,000,000, - the evidence was destroyed, the perpetrator was beaten and paraded before being battered, then handed over to the police

The Form Customary Institutions As Organs Of Law Enforcement

The form or structure of the customary institutions of the Gili Trawangan society consists of several elements, namely the Gili Trawangan adat institution, the hamlet customary judge, Lang-lang Gili Trawangan, and the Gili Satgas youth Front. The correlation between customary structures and customary delicts is illustrated in the chart below:



The structure has its own tasks and functions. The duties of each institution are;

1. The Head of village

The head of village is the Gili Indah village leader in charge of the Trawangan hamlet in the administration of the government, as well as a leader in social, cultural and sociocultural matters covering all hamlets in the Gili Indah village area

2. Customary institution

⁴ Wawancara dengan H. Muhammad Taufik, S.H., Kepala Desa Gili Inda.

⁵ Interview with H. Muhammad Taufik, S.H., The head of Gili Indah village.

Customary institutions Gili Trawangan is the highest consultative forum in taking decisions and implementing decisions regarding the rules of customs, social and cultural life of society, as well as in cracking cases that occur or arise in people's lives Gili Trawangan.

3. Hamlet Customary Judges

Hamlet customary judges are customary leaders at the hamlet level, and have the authority to decide cases such as deciding on customary offenses that have been regulated in awik-awik, that simple things can be decided solely. Hamlet customary judges are held by the head directly of the hamlet, except when there is a vacant position of the hamlet head, then the function and authority of the hamlet customary judges are taken over by the village head, or traditional elders who are part of the traditional village of Gili Trawangan.

Regarding disputes or matters which cannot be decided by the hamlet customary judges themselves, the dispute is resolved through deliberations of traditional hamlet institutions or village meetings. That where consensus rusticity institutions composed the hamlet head or the head of the village, along with the traditional elders, religious leaders, community leaders and the public concerned.

4. Lang-lang

It is a customary security organization, which has the duty to maintain security and public order voluntarily, and to carry out and oversee the enforcement of customary decisions. Customary decisions here are generally awik-awik, and customary decisions regarding violations of customary offenses specifically. Like in carrying out a procession around the perpetrators of theft, or do security against the perpetrators of adultery.

5. The Gili Satgas Youth Front

Is a special organization set up to oversee awik-awik safeguarding marine ecosystems, and the duty to secure the perpetrator or evidence-awik awik violation safeguarding marine ecosystems and together with the lang-lang customary execute judgments against the perpetrators of these violations.

The Pattern Of Settlement The Criminal Cases For Customary Offenses According To Adat Norms in Gili Trawangan Institution

Settlement of the problems as a crime on customary institution with non-litigation, with first priority use the family principle on deliberation consensus, in order to maintain the integrity and social prestige of the society. The family principle on deliberation consensus in order to maintain the integrity and social prestige of the society.

1. Theft Settlement

Customary settlement, in the case of theft, is carried out through stages or mechanisms that carried out and acknowledged jointly by the Gili Trawangan society. The mechanisms to settlement of the theft are :

a. Arrest

Arrests carry out by the victims unilaterally or by reporting to other elements such as customary security organizations, to assist/arrest together. It is also intended in the event that the perpetrator is caught in theft.

In arrests, the theft perpetrators should not be persecuted, and secured by the victim or directly by the lang-lang. Except when the actors take the fight, the offender used a weapon that hurt other people, or the actors do attempt an escape, it is allowed to make an arrest by violence

b. Proof and pleading

Proofing by confront the perpetrator with witnesses and evidence of the theft have done. The evidence and information of the witnesses were adjusted and the statements of themselves.

In cases when the incident recorded proof CCTV or security camera, then the perpetrators will be exposed and made to watch footage of the incident repeatedly to explain the tape until he confess

c. Imposition of Penalties by Traditional Judges/ Indigenous Elders/Traditional Council

when proven and perpetrators confession has taken, custom assemblies customary ruled by level offense offender act. For the offense of theft who first performed by actors, the decision handed down by the judge custom covers :

The obligation of the perpetrator to apologize to the victim and to the public.

- 1) Perpetrators paraded around Gili Trawangan. The timing, place and distance procession around and attribute/costume when actors paraded around.
- 2) Perpetrators were deported/not allowed to enter/prohibit entering on the Gili Trawangan area within 3 years.

For the second action or actors do repetition of the offense of theft a second time, the indigenous judge, ruling with;

- 1) Obligation of apology to the victims and to society.
- 2) Perpetrators paraded around Gili Trawangan. The timing, place and distance procession around and attribute/costume when actors paraded around.
- 3) The perpetrators were deported, not permitted to enter/prohibit stepping on the Gili Trawangan area within 5 years.

For the third action or actors do repetition of the offense of theft a third time, the indigenous judge, ruling with

- 1) Obligation of apology to the victims and to society
- 2) Perpetrators paraded around Gili Trawangan. The timing, place and distance procession around and attribute/costume when actors paraded around
- 3) The perpetrators were deported, not permitted to enter/prohibit stepping on the Gili Trawangan area for lifetime.

d. Execution of Customary Decisions

Customary decisions regarding violations of customary offenses do by perpetrators were carried out by the adat institution, directly and witnessed by the Gili Trawangan Society. In this case, the role is direct, especially in carrying out security when the perpetrator is paraded, and when detained after being arrested. This is to maintain and prevent persecuted against offenders

e. Follow-up by the Police

After customary settlement was done, the perpetrators are still hand over to the police. And the customary settlement by the Gili Trawangan community is taken into consideration by the police to determining the sustainability of the case, whether it will be followed up formally, or sufficiently resolved based on other policies.

When followed up through the courts, the customary settlement taken into consideration by the judge to punishment for the perpetrators.

2. Decency Settlement

Decency in the people of Gili Trawangan includes 2 groups, namely public decency offenses and offense decency complaints. Delegation of decency referred to here is acts of decency carried out by 2 or more people on the basis of likes/wants/ same time, such as adultery and infidelity, Public decency is carried out by young people who are not married, for example zina and cohabiting. The act of decency of complaint, is the act of infidelity committed by a married person, regardless of whether they have been bound, or only one of the parties who married. The fundamental nature of the differences in the decency offense

differences in sanctions. that the provisions of adat laws/sanctions regarding 2 acts of decency, there are, ccts against public decency, customary provisions offender shall be married, Acts against decency complaints, the demands of family/marital concerned in. And followed by the customary sanctions, are excluded in social life, not even the actors are excluded, but also the family.

The values of customary law that apply in this case are forms of social sanctions such as being ostracized in society. The sanctions in the form of being ostracized in the social life of the community are not only directed at perpetrators of morality, but can spread or contribute to the family such as husband/wife, children, and relatives or families of the perpetrators.

3. Settlement of Coral Reef Ecosystem Maintenance and Management

Regarding customary sanctions and sanctions, it has been stated in the form of supervising the maintenance and management of coral reef ecosystems. And based on *Awik-awik* of the maintenance and management of coral reef ecosystems in 2001, the provisions of sanctions are;

- a. Anchoring illegally place Rp. 15. 000
- b. Fishing inprohibited zone
- c. Mourami Net Rp. 1. 000.000,-
- d. Mogong Bet Rp. 100.000,-
- e. Planting seaweed in the prohibited zone is known as a demolition sanction
- f. Doi zone fishing is subject to a fine Rp. 10,000, -
- g. Removing anchors in the prohibited zone is subject to a fine Rp. 50,000, -
- h. Diving in the prohibited zone is subject to a fine Rp. 5,000,000,

Specifically for fishing procedures, the offense is not limited to use of nets, but also includes fish bombing. The sanctions provisions have been renewed and also participated in *awik-awik* with the KLU Coastal Care Forum. Namely of this sanctions for bombing or potassium fish or fishing with nets that damage coral reefs;

1. The first violation, the sanction is given letter of reprimand, and settlement by deliberation. The letter generally contains the statement of the offender not to repeat his actions. Deliberation in this case is to agree on the punishment for the actions of the offender to account for his actions. And also included in a letter, or carried out outside the statement.
2. The second violation, was given a statement, the offender was fined Rp. 30,000,000, - and submitted to the police.
3. Third violation, the offender is fined Rp. 30,000,000, - the evidence was destroyed, the perpetrator was beaten and paraded before being battered, then handed over to the police.

With their customary norms and dispute resolution customary in terms of maintenance and management of coral reefs, as well as community participation in helping to maintain the security and the preservation of coral reef ecosystems Gili Trawangan, the incidence of violations of the offense of maintenance and management of coral reef ecosystems had not occurred since 2001. So, now we can see the beauty and the environment is preserved Gili Trawangan.

That the customary sanctions / reactions imposed on the perpetrators are, among other things, relevant to the type of customary reactions in the Van Hat Adatrech section X, including⁶:

1. Replacement losses in-material in various such as coercion to marry girls who have been defamed.
2. Paying customary money to the affected person in the form of a sacred object as a substitute for spiritual loss.
3. Salvation (sacrifice) to cleanse the community of all unclean impurities.

⁶ Rahardjo, S. (1982). Ilmu Hukum. Bandung: Citra Aditya Bakti, op. cit, p. 114

4. Cover shame and apology.
5. Various forms of corporal punishment.
6. Exile from the society and putting people outside the law.

Focused on expert opinion of adat law, that sanction or reaction customs imposed on the violators are useful to restore peace and balance disturbed and reactions that custom is. The actions that intend to restore calm magical harassed and negate or neutralize an unlucky situation posed by a customs offense. Thus customary law is maintained and exists as a guide in managing life together to create peace and balance.

CONCLUSION

The qualified and exist in traditional offense Gili Trawangan general public in the form of: a. General crime, namely theft, b. Decency, adultery/cohabiting and infidelity, c. Preservation of marine ecosystems. Norms or customary law is still alive, grow and develop in society Gili Trawangan.

Forms of traditional institutions of society Gili Trawangan, law enforcement organ composed of judges/ elders, lang-lang (customs security), and front Gili youth. The judge or elders in charge to decide or judge customary judge actions. Lang-lang or customary security functions to maintain security and order in the implementation of traditional activities, especially the implementation of customary decisions related to customary offenses. The Gili Satgas youth front serves to uphold the management and utilization of coral reef ecosystems, and to guard the settlement/ customary decisions in the event of delays in the management and utilization of coral reef ecosystems.

Settlement of criminal cases for customary offenses is based on the provisions of the customary law of the Gili Trawangan society, namely through mechanisms through customary institutions in accordance with the type / nature of offenses that occur. As well as by promoting the principle of kinship with deliberation guided by religious values, the value of local wisdom and customs regulations agreed that became awik-awik

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