



Comparison Of The Legal Perspective Of The Kutai Customary Court (Dayak Tribe) With Positive Criminal Law On The Crime Of Murder

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Abstract *The lives of traditional law communities in Indonesia reflect the cultural diversity and traditional riches of various ethnic groups. This research discusses the application of positive criminal law to criminal acts of murder in Indonesia, with a focus on the West Kutai traditional tribe, the majority of whose population comes from the Dayak tribe. This research uses normative legal methodology or library research. The results of this research describe the application of positive criminal law to criminal acts of murder, the classification of these criminal acts based on error factors and their objects, as well as the Dayak tribe's perspective on murder cases using Sutherland's criminological theory.*

Keywords: *Criminal Law, Customary Law, Homicide*

Abstrak Kehidupan masyarakat hukum adat di Indonesia mencerminkan keanekaragaman budaya dan kekayaan tradisional berbagai suku bangsa. Penelitian ini membahas tentang penerapan hukum pidana positif terhadap tindak pidana pembunuhan di Indonesia, dengan fokus pada suku adat Kutai Barat yang mayoritas penduduknya berasal dari suku Dayak. Penelitian ini menggunakan metodologi hukum normatif atau studi kepustakaan. Hasil penelitian ini mendeskripsikan penerapan hukum pidana positif terhadap tindak pidana pembunuhan, penggolongan tindak pidana tersebut berdasarkan faktor kesalahan dan objeknya, serta cara pandang suku Dayak terhadap kasus pembunuhan dengan menggunakan teori kriminologi Sutherland.

Kata Kunci : Hukum Pidana, Hukum Adat, Pembunuhan

INTRODUCTION

The lives of traditional law communities in Indonesia reflect the cultural diversity and traditional riches of various ethnic groups. Even though they have the same basis and characteristics, namely Indonesian-ness, the Indonesian nation's traditions are known as "Bhinneka Tunggal Ika," which shows the diversity that remains united. The diversity is not static but continues to develop following the evolution of civilization and the demands of the times. (Dominikus, 2014)

The application of positive criminal law to the crime of murder is an important aspect of the Indonesian legal system. Assassination in the condition of death, and the causal correlation between actions and the result of death.

In the Criminal Code, murder can be classified based on the culpability factor and the object. The error factor includes planned and unplanned crimes, while the object involves crimes against the lives of adults, toddlers, and unborn children. There are seven types of criminal acts of murder regulated in the Criminal Code, varying from ordinary murder to premeditated killing. (Sinar, 2017)

West Kutai, a district in East Kalimantan Province, has a majority population from the Dayak Tunjung tribe. Customary law has an important role in forming local wisdom values

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and rules that serve as guidelines in everyday life. Its unwritten nature and originating from local cultural traditions means that customary law remains relevant in guiding society. For example, the murder of Medellin Sumual in West Kutai Regency enticed attention because the perpetrator was not only punished criminally by the state but was also subject to customary sanctions by the Kutai Regency Large Customary Institution. This decision includes compensation awarded in customary trials. Therefore, the problem that then arises is how to compare the legal perspective of Kutai customary justice with positive criminal law regarding murder.

METHODOLOGY

This research is included in normative legal research or what can also be called library research. (Soekanto, 2013) This research examines documentation studies using various secondary data such as statutory regulations, court decisions, legal theory, and expert opinions. After acquiring the data, the analysis process will be conducted employing a comparative legal approach which will examine two or more things to analyze the differences and similarities they have.

RESULTS AND DISCUSSION

Application of Positive Criminal Law to the Crime of Murder

Murder is a global term used in criminal code to describe a crime in which the suspect or accused receives the death penalty against another person. (Ali, 2013) In the regulations in the Criminal Code, there are provisions regarding murder, namely in Article 338 which reads "Whoever deliberately kills another person's life, shall be punished for murder, with a very long prison sentence of 15 years". The act of stealing another person's life as expressed in Article 338 of the Criminal Code requires compliance with three provisions, namely:

1. There is a form of action
2. There is an influence in the form of death
3. There is a correlation and causal relationship between actions and consequences in the form of death

In the Criminal Code, there is an outline that can be classified into a criminal act of murder, namely murder that originates from fault factors and that originates from the object. In explaining the factors of error, the crime of murder can be classified into two, namely:

1. Crimes include premeditated attempts on lives as regulated in articles 338-350 of the Criminal Code

2. Unplanned crime

Meanwhile, the criminal act of murder which originates from the object will be classified into three things, namely:

1. Crimes against the lives of other people are generally regulated in Articles 338, 339, 340, 344, and 345 of the Criminal Code.
2. Crimes against toddlers in this act are regulated in Articles 341, 342, and 343 of the Criminal Code
3. Crimes against the lives of toddlers (future children), as stated in Articles 346, 347, 348 and 349 of the Criminal Code

There are two types of crimes, namely crimes against life intentionally and unintentionally. The Criminal Code (KUHP) regulates 7 (seven) types of murder, namely as follows: (Hamzah, 2014)

1. Ordinary murder is regulated in Article 338 on ordinary murder
2. Accompanied Murder, regulated in Article 339 of the Criminal Code, where murder in Article 339 of the Criminal Code is an aggravated crime
3. Premeditated Murder This criminal offense is regulated in Article 340 of the Criminal Code. This article covers ordinary murder and planning

The Dayak Tribe's Perspective on Murder Cases in Sutherland's Theory

Murder is defined as an act that results in the loss of a person's life, either intentionally or unintentionally. The motive for the murder consists of various reasons, therefore this is where criminology is used to study crime in society. Criminology is defined as "The body of knowledge regarding crime as a social phenomenon." It includes law formation, law-breaking, and its reactions. (Hurwitz, 2017)

Sutherland's theory emphasizes that criminology involves understanding the social aspects of crime. Sutherland's three main theories involve legal sociology, criminal etiology, and penology. An explanation of the three main points of Sutherland's theory is as follows:

- a. Legal Sociology, which is an effort to analyze conditions that influence the development of criminal law and explain the various policies and procedures used in criminal justice practice.
- b. Criminal Etiology, namely efforts to conduct scientific analysis of the causes of crime.
- c. Penology, namely the part that investigates criminal trials.

In the murder case that occurred in the West Kutai area, the perpetrator named Munawir was suspected of taking out the premeditated murder of the victim named Medellin.

(Ismail, 2013) Analysis using Sutherland's criminological theory shows that this action can be understood through the lens of legal sociology and criminal etiology.

According to legal sociology theory, planning this murder may arise as a response to the victim's rejection, which triggers feelings of anger and disappointment in the perpetrator. The perpetrator feels unfulfilled in his desires, and this rejection creates a state of coercion for the perpetrator. In the context of criminal etiology, the hurt felt by the perpetrator is the main driving force behind his decision to commit a crime. (Prakoso, 2017)

In the context of the murder case in West Kutai, Sutherland's theory analyzes the social factors that influence criminal acts. For example, legal sociology and criminal etiology can be used to analyze the background of a crime, such as the victim's rejection which causes the perpetrator to feel angry. In this case, it shows that there are differences between customary law and national law. Customary law, in this case, can influence the perpetrator's actions and the sanctions he receives. Customary law is recognized in the Indonesian constitution, and these differences can reflect the complexity of a multicultural society with cultural diversity. (Sinar, 2017)

The murder case was based on the perpetrator's intention or plan to kill the victim. (Yanri, 2017) This motivation is caused by revenge, which can come from the perpetrator's hurt towards the victim's rejection or certain treatment. Perpetrators receive two types of punishment, namely national criminal law and customary law at the local level. It reflects the complexity of law enforcement in a society that still upholds traditional values. In this case, it also includes elements of SARA because it involves differences between the perpetrator and the victim. The perpetrator degrades the nature of women, which can result in SARA-based conflicts in society.

Kutai Customary Court Decisions in the Indonesian Judicial System

Customary law is not considered formal regulation because it is unwritten. However, the Supreme Court of the Republic of Indonesia (MA RI) recognized the decision of the traditional body. (Hadikusuma, 2014) Traditional body decisions are recognized as the basis for considering court cases and have the legal intensity of decisions of the District Court (PN). The principle of *ne bis in idem* (cannot be tried twice for the same case) is recognized in the Supreme Court decision. If a violation of customary law has already been subject to customary sanctions, then the District Court is prohibited from imposing additional sanctions, under this principle and Article 76 of the Criminal Code (KUHP). (Jaya, 2013)

The Supreme Court's decision on 15 May 1991 (Number 1644 K/Kr/Pid/1988) gave recognition to customary courts in resolving customary violations. The Supreme Court's

recognition shows that traditional institutions have a role in resolving problems without going through formal court channels. In previous cases, murders had been resolved through customary justice with the decision of a customary judge. The customary punishment provided includes various sanctions, and the total forfeiture must be paid within six months. (Wangki, 2017)

Even though customary decisions have permanent legal force, the District Court (PN) still has the authority to carry out pre-trial proceedings if traditional sanctions have a time limit. The District Court cannot retry the perpetrator if the customary fine has been paid within the specified time limit. After settling the customary fine, the District Court has no right to retry the perpetrator based on the principle of *ne bis in idem*. (Harahap, 2018) Therefore, it is important to recognize customary law in the Indonesian legal system and involve *ne bis in idem* to prevent multiple trials for murder cases that occur within the Kutai custom.

Application of Kutai Customary Criminal Law Sanctions for the Crime of Murder

Customary law and national law cannot be separated in a multicultural society like Indonesia. Before the existence of national law, Indonesian society adhered to traditional law which originated from daily habits and customs. (Marco, 2015) Customary law is a rule of decency related to individuals and has the character of an individual's conscience, not as a social being. Customary law regulates the daily lives of indigenous peoples and develops with the times.

Article 18B paragraph (2) of the 1945 Constitution acknowledges and respects the unity of customary law communities and their traditional rights, as long as they are by community development and the principles of the Unitary State of the Republic of Indonesia. Customary law teaches people to act appropriately as humans and provides sanctions for violations of customary rules. (Dominikus, 2014)

In the case of murder that occurred in West Kutai, which is a customary law community, it is natural for the perpetrator to receive customary sanctions for violating the customary provisions that exist in the West Kutai area, namely the Bolitn Mate Namar Uman Customary Law, namely by providing various sanctions, and the total fine must be paid within six months to the victim's families.

CONCLUSION

Positive criminal law in Indonesia, especially in the Criminal Code (KUHP), has provisions that regulate the crime of murder. Murder can be classified based on fault factors and objects, including planned and unplanned murder. Various articles in the Criminal Code

regulate the crime of murder, such as Article 338 (murder in the ordinary form), Article 339 (accompanied murder), and Article 340 (premeditated murder).

Sutherland's theory emphasizes the social aspects of crime, involving legal sociology, criminal etiology, and penology. Analysis of murder cases in West Kutai using Sutherland's theory reflects the social impact, motivation of the perpetrator, and the criminological factors underlying the act. There are elements of SARA in this case, which can complicate legal handling and reflect the complexity of multicultural society.

West Kutai traditional law, such as the Bolitn Mate Namar Uman Customary Law, has a role in resolving traditional violations. Recognition of customary law in the Indonesian legal system is important to prevent multiple trials and maintain the principle of *ne bis in idem*. Perpetrators in West Kutai murder cases may receive customary legal sanctions, which include fines that must be paid to the victim's family within a specified time limit. the application of positive criminal law and customary law in murder cases in West Kutai reflects the complex dynamics between national and customary law as well as the role of criminological theory in analyzing social factors that influence criminal acts.

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