

The Adat Litigation and Adultery Sanctions In Batanghari-Jambi Province

Fathuddin Abdi
Efni Anita
Eja Armaz Hardi

Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi, Indonesia
alfathud@gmail.com

Abstrak

Paper ini menganalisis tentang proses penyelesaian dan sanksi perzinaan secara hukum adat di lembaga adat Kabupaten Batanghari dalam perspektif hukum Islam. Metode penelitian menggunakan sosiologi hukum dengan pendekatan kualitatif. Teknik pengumpulan informasi dan data menggunakan observasi, wawancara dan studi literer. Teknik analisis menggunakan interaktif model. Hasil penelitian menunjukkan, proses penyelesaian dan sanksi perzinaan dalam hukum adat di lembaga adat Batanghari, yaitu 1) pasangan zina dipanggil oleh pemangku adat (ninieki mamak) dan dikumpulkan oleh perangkat desa (tuo-tuo tanganai) untuk disidang; 2) apabila mereka mengaku maka pemangku adat (ninieki mamak), pegawai syara' dan Kepala Desa menetapkan sanksi yang berupa denda/butang dengan penetapan waktu pembayaran; 3) waktu yang telah ditetapkan adalah 1x7, 2x7, 3x7 (3 minggu). Jika pelaku belum membayar sesuai yang ditetapkan, maka diusir dari kampung, karena dianggap tidak menghormati hukum adat. Sanksi bagi pelaku perzinaan tersebut tidak sama dengan hukum pidana Islam, yaitu hukuman rajam bagi pelaku zina. Namun, secara substantif tidak bertentangan dengan hukum Islam karena dalam Al-Quran dan Sunah tidak menunjukkan larangan pemberian sanksi kurang dari hukuman yang ditetapkan syariat, bahkan hukum Islam mengimbau agar pelaku dimaafkan atau diberi hukuman yang tidak melebihi perbuatan pelaku. Oleh karena itu, seharusnya ada penyesuaian antara hukum adat dengan hukum Islam.

Kata kunci: Hukum Adat, Hukum Islam, Perzinaan, Sanksi

Abstract

This paper analyzes about the process and sanctions for adultery in the Customary institutions of Batanghari according to Islamic law. The method used sociology of law with a qualitative approach. The technique of collecting information uses observation, interviews and literary studies. The analysis technique uses an interactive model. The results showed, the resolution process and sanctions adultery in the Customary Institution of Batanghari, are: 1) adultery pairs will be called by customary stakeholders (ninieki mamak) and collected by tuo-tuo tanganai; 2) if both have confessed, the ninieki mamak, syara' officials and the village head will determine the sanctions in the form of fines/debts and the time of

payment; 3) payment times: 1x7, 2x7, 3x7 (3 weeks). If, the perpetrator has not paid, then he will be expelled from the village, because it is considered that he does not respect customary law. The sanctions for the perpetrator of adultery in that customary law is not the same as the Islamic criminal law, namely the stoning penalty for adultery. However, substantively it does not contradict Islamic law because the Al-Quran and Sunnah do not show the prohibition of imposing sanctions that are less than the ones stipulated by sharia, even Islamic law calls for the perpetrator to be forgiven or to be given a punishment that does not exceed the perpetrator's actions.

Keywords: Adultery, Customary Law, Islamic Law, Sanctions

Introduction

The people of Batanghari is an image of a heterogeneous society because, has been occupied by a variety of ethnicities and tribes, such as Malays, Javanese, Bugis, Batak, Kerinci, Batin, Dua Belas, Penghulu, Orang Dalam, and so on. In Batanghari there was an old Malay kingdom in the 6-7 century AD, definitely in Muara Tembesi which is known as Batanghari Regency today. The heterogeneity of the background has been characteristic of the application of Islamic law in Batanghari Regency which was the former Old Malay kingdom. The people of Batanghari Regency have a consensus to maintain the ancestral legal system, so that customary institutions play an important role in resolving cases that occur in society.

In the case of adultery, the community generally will resolve the case in a customary institution. According to the informant, the people of Batanghari has obeyed the customary laws that have been passed down by their ancestors rather than the Islamic law settlement. In Batanghari Regency, the people are mostly Moslems and at the same time they uphold the applicable customary rules so that the settlement of cases of adultery *muhsan* or *ghayr muhsan* is settled by customary law.

In imposing sanctions for adultery perpetrators, Batanghari Regency has several alternative solutions, including: first, implementing formal legal procedures that apply in Indonesia, and; second, settlement through customary institutions without applying criminal procedural law. However, In practice, customary institutions in Baranghari Regency are led by a chairman who is trusted by the community to overcome various social problems in the community that can disrupt the balance of the natural ecosystem. Therefore, the role of customary institutions becomes sacred and believed that is able to restore this balance. The sanction provided to married adulterers (*muhsan*) is to pay a fine to the community which is known as the term "*serbo seratus*" by the people of Baranghari Regency, namely: one buffalo,

hundred bushels of rice, hundred coconut fruit, and *selemek semanis* or a staple food ingredient. Then the unmarried adulterer (*ghayr mubsan*) is punished in a customary penalty by giving a fine known as "*serbo duoulub*", namely: one goat, twenty bushels of rice, twenty coconuts, *selemek semanis* or a staple food ingredient, and mated. Those two types of sanctions, according to the chairman of the Batanghari Regency customary institution, are aimed to wash the village and as a deterrent effect on the perpetrators from repeating their actions again in the future.

Research by Damayanti, SD, Harun, H., & Rasito, R. (2020) about "*Application of Sanctions for Perpetrators of Child Rape in the Island Village, Muara Tembesi District, Batanghari Regency given Islamic Criminal Law*", also shows that rape was carried out by *cuci kampung* (washing the village), in which the perpetrator bought a buffalo and the spices used to process the meat and was exiled in the village. Putra, C. Ash-Shiddiqi, MH, & Rasito, R. (2019) about "*Stipulation of Customary Sanctions Against Adultery Perpetrators According to Islamic Law and Positive Law Views (Case Study in Sungai Ruan Ulu Village, Kecamatan Maro Sebo Ulu, Batanghari Regency)*". The implementation of customary sanctions for adulterers is to invite all people, especially *ninik mamak* from the perpetrator. The purpose of these sanctions is that there are no more demands for parties who commit violations in the future. Segaf, Q., Ash-Shiddiqi, M. H., & Maryani, M. (2019) on "*Customary Criminal Sanctions About Adultery in Islamic Law Perspective in Pelayangan Seberang District, Jambi City*". Determination of the punishment for adultery perpetrators in Pelayangan District, namely, if the person committing adultery is married, then they are punished by paying a fine / debt to the community which is called "*serbo seratus*", i.e: one buffalo or cow, one hundred bushels of rice, one hundred coconut fruit and the sweetest fats,.

This research analyzes about the process of resolution of cases and sanctions for adultery in the adat institutions of Batanghari Regency from the perspective of Islamic law. The research method used is the sociology of law with a qualitative approach. The technique of collecting information and data uses observation, interviews and literary studies. The analysis technique uses an interactive model. The juridical aspect of the research is used to examine the normative/juridical concept of case resolution and sanctions for adultery perpetrators as stated in Jambi customary law and Islamic legal theory on adultery. The interviews were determined by the purposive sampling method. Direct observation of the process of case settlement and the sanctions for adultery perpetrators committed by the

customary institution of Batanghari Regency is an important part of getting a holistic description of the topics discussed

Result and Discussion

1. Overview of the Community and Customary Institutions in Batanghari Regency.

Batanghari Regency is located in the central part of Jambi Province, Indonesia with an area of 5,804.83 km². Geographically, it is located at the position of 1°15 'to 2°2' south latitude and between 102°30 'east longitude to 104°30' east longitude. The total population is 272,879 inhabitants. Most of the population in Batanghari district, is in the poverty line, with a figure of 26,534 people (9.75%). The livelihoods of the population are: processing industry, 21,200 people (17.72%), the service sector is 41,571 (33.96%), while the number of unemployed is 4,414 people (3.57%). The total enrollment rate for schools aged 7-12 years in 2019 is 99.46 percent. That means, education for children aged 7-12 years is good. The total enrollment rate for schools aged 13-15 is 94.88 percent. The school participation rate for ages 16-18 years is 70.41 percent. The minimum number of school enrollments is at the age of 16-18 years, where at that age many choose to migrate to cities and choose to work rather than school (BPS, 2020).

Batanghari Regency has the slogan " *Bumi Serentak Bak Regam* ". That Means, showing the same disposition and customs (deliberation and consensus). The customs in Batanghari are also highly respected which are integrated with religious values (Islam) with the slogan " *adat bersendi syara', syara' bersendi kitabulloh, syara' mengato adat memakei* ". That means, the people in Batanghari Regency uphold the provisions of religion (Islam) and culture in all aspects of life. The people in Batanghari Regency are known as religious communities, with the majority of the population, namely 264,812 (90%) Muslim. The customs in this area are developed habits that have also served as guidelines for the community from generation to generation.

The customary institution of *Bumi Serentak Bak Regam* which lives and develops in the midst of society plays an important role in community relations and can mobilize community participation in various fields. Adat and the Customary Institutions of *Bumi Serentak Bak Regam* that live and develop in the community is a custom which is based on Sharia and Sharia base on *Kitabullah*. The existence of customary institutions in Batanghari Regency is confirmed by the Batanghari Regency Regional Regulation No. 17 of 2017 concerning

Amendments to Regional Regulation No. 6 of 2008 concerning the Guidance and Development of Adat and Traditional Institutions of the *Bumi Serentak Bak Regam*. The Customary Institution of *Bumi Serentak Bak Regam* is a community organization formed by customary law communities which are supported by certain territories and their own assets, has the right and authority to regulate and manage and resolve various problems related to customs of *Bumi Serentak Bak Regam* in Batanghari Regency. It is a density institution of *Datuk-Datuk, Tuo Tenggana, Cerdik Cendikia* inherited from generation to generation and functions to preserve customs and resolve conflicts related with customs *Bumi Serentak Bak Regam* in Batanghari Regency (Article 1 Paragraph (9) Perda 17 of 2017)

The jurisdiction of *Bumi serentak bak Regam* customary institution in Batanghari Regency covering the area of the district, sub-district to the village (Article 4). The tasks from the customary institution of *Bumi serentak bak Regam* in Batanghari Regency, including 1) to explore, develop and maintain the uniqueness of the customs, traditions and culture from the customary institution of *Bumi serentak bak Regam* to preserve regional culture in Batanghari Regency and national cultural treasures; 2) managing and managing the customary institution of *Bumi serentak bak Regam*; 3) cross-settlement as long as it does not conflict with the prevailing laws and regulations; 4) inventory, secure, maintain, manage and utilize the resources owned by the customary institution of *Bumi serentak bak Regam* to improve the welfare of the community (Article 5).

The functions from the traditional institution of *bumi serentak bak Regam*, among others: 1) assisting the government in development in all fields, especially in the social and social and cultural fields; 2) giving a legal position according to adat related to the assets of the customary law community to resolve the *silang sengketo*; 3) carry out empowerment, fostering and development of customary values in the framework of enriching, preserving and developing regional culture and national culture; 4) emphasizing and making use of the provisions of the customs that live and develop in society for the welfare of the community; 5) in the process of resolving the *silang Sengketo* from Customary Institution established LID as a Customary court which consists of elements, namely: *Tali Togo Sepilin / Sit Tigo Silo / rajo Tigo Silo / Tunggu Sejerang* (Article 6)

2. The Concept of Customary Law and Adultery Litigation in Batanghari Regency.

Customary law is a system of rules applicable in the life of Indonesian society originating from customs which are hereditary respected and obeyed by the community as a tradition of the Indonesian nation (Bisri, 2012). Law is generally understood as a set of rules or norms, either written or unwritten which is categorizing a behavior as right or wrong (Saptomo, 2013). The meaning of customary law, according to Soepomo and Hazairin as quoted by Bushar Muhammad, is:

"Laws regulating the behavior of Indonesian people in relation to one another, whether it is the whole custom and habit (morality) that actually live in indigenous peoples because it is adhered to and maintained by members of society, or which constitutes the whole of the regulations concerning sanctions for violations stipulated in the customary ruling, namely those who have the authority to make decisions in the customary community, consist of the head of the village, religious leaders, assistant to the village head, land guardian, customary leader, judge"(Muhammad, 1991).

Customary law is a unity that is inseparable from customs so that customary law is a manifestation of the legal awareness of a community whose social and cultural structure is still simple (Soekanto, 2002). In order to qualify as guarantor of stability and peace, customary law communities must meet several criteria which are, namely, applied logically, philosophically, and in juridical (Mayasari, 2010). The function of customary law is then as a guide for every community and as a corrector for community members. From some of the definitions of customary above, it can be understood that the customs of the Batanghari Regency people are manifestation of the rules and customs of the indigenous peoples. This tradition is believed to have great values that must be respected and obeyed in order to create peace by resolving things that occur in society.

Disputes outside the court are generally resolved through civil mechanisms. However, the facts show that many criminal cases are also resolved outside the court. This resolution is through decrection of law enforcement officials or through deliberation mechanisms (family, village and customary deliberations) (Nawawi, 2012). Practically, in Batanghari District, the settlement of a law violation is led by a customary leader who is trusted by the community. The customary leader leads the customary judicial procession in a friendly, democratic and deliberative manner, so that this leadership model is believed by the community could restore the balance of the ecosystem after being disturbed by a law violation.

The restoration of community balance is preceded by the process of a customary peace. This peace departs from the perpetrator's awareness of his actions, so that it can be

considered as an acknowledgment of the perpetrator for his wrongdoing which has damaged the system of society. Recognition of the perpetrator for his actions is ended with sanctions based on applicable customary provisions. The provisions for customary sanctions in Batanghari Regency related to adultery violations are set differently. The difference is seen from the perpetrator of adultery; married or unmarried. For married adulterers (*muhsan*) the customary sanction is to pay a fine to the village community, while unmarried adulterers (*ghayr muhsan*) are subject to a fine and immediately got married. The fine for married adulterers (*muhsan*) is known by the people of Batanghari Regency as "*serbo seratus*", means paying a fine in the form of one buffalo, one hundred bushels of rice, one hundred coconuts, and *selemak semanis* (a staple food ingredient). The implementation of this procession is witnessed and enjoyed with the village community, so that the process is known as "*cuci desa*" (village wash). This series of customary activities is believed by the community as an effort to provide a deterrent effect on the perpetrators and lessons for other communities so that similar acts do not happen again. In addition, adultery committed by married people is considered a major disaster, so the community believes that a "*cuci desa*" process should be carried out to clean the village from sins and calamities.

The customary fine imposed on unmarried adulterers (*ghayr muhsan*) is known as "*serbo duoulub*", means the fine paid in the form of one goat, twenty bushels of rice, twenty coconuts, and *selemak semanis* (a staple food ingredient). The fines are cooked and eaten together in front of traditional leaders, religious scholars, and community elders (*tuu tanganai and niniek mamak*). The two processes are one of the traditional settlement mechanisms in Batanghari Regency which have been hereditary implemented until now, so that this habit has become a culture (*'urf*) in the Batanghari community.

One of the uniqueness of Jambi customs is that there is a customary law which contains the rules and provisions of the customary criminal law (*adat delicten recht*). In the Jambi customary law book, actions against the law are divided into two, namely big mistakes (*sumbang besar*) and small mistakes (*sumbang kecil*). A large contribution is attributed to illegal acts that result in losses and disrupt the balance of the community's ecosystem and nature as a whole. A small contribution is connoted as an act of violating customary law which results in losses to only a few people.

The Batanghari customary law system is called the "*undang nan duapuluh*" or the twenty laws. Systematically, the twenty laws are divided into two parts, namely "*pucuk undang nan delapan*" or eight laws and the "*anak undang nan duabelas*" or twelve sons of law. The two parts of the law jointly regulate the forms of public crime (public law) and community order which is directly related to the socio-economy (private/civil law). Table 1 below presents the articles contained in the two parts of the Jambi customary law:

Tabel 1
 Customary Law of Batanghari "*undang nan dua puluh*"

1	" <i>pucuk undang nan delapan</i> " (Batanghari, 2015)	
A	<i>Dago-Dagi</i>	"all kinds of actions that disobey common interests or public interests could cause chaos in the country".
B	<i>Sumbang-Salah</i>	"Doing something that is generally considered as disgraceful because it is not proper"
C	<i>Samun-Sakai</i>	"taking other people's belonging by force with torture and destruction"
D	<i>Upas-Racun</i>	"carrying out the murder using a poison ingredient and lead to the sickness for a long time before died, while those who are affected usually die instantly".
E	<i>Siur Bakar</i>	"the deliberately burning down villages, houses, gardens, or agricultural fields".
F	<i>Tipu-Tepok</i>	"someone who are doing something to obtain benefits by means trickery and seduction or false circumstances"
G	<i>Maling-Curi</i>	"taking others' belongings with the intention of owning them without knowing the owners either at night or during the day"
H	<i>Tikam-Bunuh</i>	"violating other people using sharp weapons or other tools which lead to the death"
2	" <i>anak undang nan dua belas</i> " (Batanghari, 2015)	
A	<i>Lebam-Balu di Tepung Tawar</i>	"someone who hurts other body is obliged to treat them until they are healed and well again until the scars are disappeared"
B	<i>Luka-lekih dipampas</i>	"anyone who injures others physically is sentenced to pay fine which is categorized into three: Low wound, the fine is a chicken, a basket of rice and two coconut palms; High wound, the fine is a goat, twenty bushels of rice, and; Severe wound, the fine is calculated <i>selengan separoh bangun</i> "
C	<i>Mati di Bangun</i>	"anyone who murders other is punished to pay a buffalo, 100 bushels of rice and 1 eucalyptus (30 yards)"
D	<i>Samun</i>	"seizing other people's belongings by force and is conducted on the edge of the forest or the smallest place"
E	<i>Salah makan diludab</i>	" <i>Salah bawak dikembalikan Salah pakai diluruskan</i> , means that whoever has carried out something that leads to the loss have to replace or to pay the same amount of loss as what

		he/she has been done”
F	<i>Hutang kecil dilunasi</i>	“ <i>Hutang besar diangsur</i> . Means that if someone has a debt, he must pay it off. If the amount of the debt is small, it must be paid off at once. If the amount of the debt is much, it can be paid off several times”
G	<i>Golok Gadai Timbang Lalu</i>	“Property or something that is handed over to someone else as a guarantee of debt will move to the other owner if the time determined has passed”
H	<i>Tegak Mengintai Lenggang</i>	“ <i>Duduk menanti kelam, tegak berdua bergandeng dua, salah bujang dengan gadis kawin</i> . Means that the relationship between a boy and a girl who are strongly suspected to disobey customary law and have embarrassed the village must be married”
I	<i>Memekik Mengentam Tanah</i>	“ <i>Menggulung lengan baju, Menyingsinkan kaki celana</i> . Means that someone who challenges other to fight. If someone who is challenged is ordinary person, the fine will be a chicken, 1 bushel of rice, and tow coconuts. But, if the one who is challenged is someone who has higher position, they will be punished to pay fine of a goat, 20 bushels of rice, and 20 coconuts”.
J	<i>Menempub Bersamar</i>	<i>nan</i> “ <i>Mengungkai nan bererbo</i> , means that someone who enters a prohibited place or climbs prohibited fence. This act will be punished with 1 chicken, 1 bushel if rice, and two coconuts”.
K	<i>Meminang di atas Pinang</i>	“ <i>Menamar diatas tamar</i> . Means that if a girl has been proposed and the proposal is clearly accepted, then the status of the girl may not be proposed by others anymore. The disobedience of this provision will be punished with a goat and 20 bushels of rice”.
L	<i>Umo Bekandang siang Ternak bekandang malam</i>	“the farmers have to look after <i>umo</i> (rice fields). If the plants of the farmers are eaten or are damaged by cattle during the daytime, the owner of the cattle cannot be sued for compensation, but if it occurs at night, the owner of the cattle must pay compensation with the same amount of the plants eaten or damaged by his cattle”.

Source: Batanghari, L. A. K. (2015)

The Batanghari of customary law system, which jointly regulates forms of public crime (public law) and community order which is directly related to socio-economic (private / civil law) and must be obeyed by all indigenous peoples.

3. The litigation process and sanctions for perpetrators of adultery in the customary law of Batanghari.

According to the customary law of Batanghari Regency, the settlement process of disobedience is carried out with the principle of "*bajanjang naiak batanggo turun*". Every

customary issue, including the act of adultery, before the perpetrator is tried in front of the customary leader, the solution is first sought through negotiations between the two parties. In the customary justice mechanism, the customary leader acts as an intermediary or negotiator for two parties in order to reach a peace agreement for all parties. Judiciary is carried out effectively and efficiently. The evidence that forms the basis of adultery has been completely inventoried, such as two warnings from residents when there is a case of pregnancy out of wedlock or being caught in the act by the community. If anyone commits adultery in their territory, the steps to be taken are as follows: 1) the violators of the rules, namely adultery couple, were summoned by the customary holders (*adat / niniek mamak*) and the village officials (*tuo-tuo tengana*) were gathered to make a trial against the two adulterers; 2) if both of them have admitted that they have committed adultery, then the customary holders (*adat / niniek mamak*), *syarak* officials and the village head immediately determine sanctions in the form of fines / debts for both of them and by determining the time of payment; 3) the time stipulated in customary law for adulterers in terms of paying the fine is 1x7, 2x7, 3x7; means 3 weeks. If within the stipulated time the adultery offender has not paid the fine, then both of them will be expelled from the village for good, because they are considered not fulfilling and respecting the customary laws / customs that apply in the village (Hanafi; 2019)

The violators of the rules, adultery partners, will be given the following sanctions: 1) if those who commit adultery are unmarried (bachelor and virgin), the penalty is to pay a fine / debt which is called "*serbo duapulub*", namely: one goat, twenty bushels of rice, twenty coconut fruit and a staple food ingredient and by marrying or get married and immediately wash the village. Marriage between the two actors should not be juxtaposed like any other marriage, because they have violated *adat* and *syarak*, but have not been expelled from the village; 2) if the person committing adultery is a married person, then they are punished by paying a fine / debt to the village community which is called "*serbo seratus*", namely: one buffalo, one hundred bushels of rice, one hundred coconuts and a staple food ingredient. Couples who commit adultery for those who are married (have a family) are expelled from the village for 2 years; 3) to indicate that an adulterous couple, both unmarried and married (family) agree that a new punishment is imposed which must be obeyed. The sign of agreement is in the form of a white cloth with three bags (a shroud about the size of a body) which means an apology to the public for his actions until death; and 4) the customary leader will instruct the adulterous

couple to clearly apologize to the community and greet all the people who take part in the village washing ceremony (Madjid; D. Yusuf , 2019) .

Based on an interview with Amir; Hanafi & Muzammil (2019), the stages and lines of punishment that must be carried out by two adulterers who violate the customary rules of Batanghari Regency have been regulated in the customary law itself, however the form of sanctions or penalties for adulterers in the customary law of Batanghari Regency is divided into six groups, namely:

- a. A married offender who then commits adultery with someone else's wife, then the woman's husband has the right to go down by conviction (in material form). Punishment: "*serbo seratus*", namely: one buffalo, one hundred bushels of rice, one hundred coconuts and *selemak semanis* or a staple food ingredient, three white cloths (a shroud the size of a corpse) which means apologizing to the community for their actions to death and being expelled from the village for 2 year.
- b. Sexual intercourse between these young people is determined by the circumstances and the relationship between them as well. punishment: "*serbo duoulub*" namely: one goat, twenty bushels of rice, twenty coconuts and *selemak semanis* a staple food ingredient, three cloth of *kebung* (a shroud the size of a corpse) which means an apology to the community for his actions to death and by being married.
- c. Adultery with the son's own family with his mother. The name of the offense: stabbing the earth means son fornication with his mother. Punishment: "*serbo seratus*", namely in the form of: one buffalo, one hundred bushels of rice, one hundred coconut and *selemak semanis*, three white cloths (a shroud the size of a corpse), which means apologizing to the community for their actions to death and being expelled from the village for 2 years.
- d. Adultery with one's own family father with daughter. The name of the offense: scratching the egg means the father commits adultery with the child. Punishment: "*serbo seratus*", namely: one buffalo, one hundred bushels of rice, one hundred coconuts and *selemak semanis*, three white cloths (a shroud the size of a corpse) which means apologizing to the community for their actions to death and being expelled from the village for 2 year.
- e. The leader/ruler commits adultery with ordinary people. The name of the offense: bathing in the destruction of ivory means the leader/ruler commits adultery with ordinary people. Punishment: "*serbo seratus*", namely: one buffalo, one hundred bushels of rice, one hundred

coconuts and *selemek semanis*, three white cloths (a shroud the size of a corpse) which means apologizing to the community for their actions to death and being expelled from the village for 2 year.

- f. Adultery brother with younger sister. The name of the offense: cutting flowers, a sprig means an adulterous brother with a younger sister. Punishment: "*serbo seratus*", namely in the form of: one buffalo, one hundred bushels of rice, one hundred coconuts and a staple food ingredient, three white cloths (shroud the size of a corpse) which means apologizing to the community for their actions to death and being expelled from the village for 2 year.

Based on the facts above, it can be interpreted that, the litigation process for irregularities according to the customary law of Batanghari Regency is carried out with the principle of "*bajanjang naiak batanggo turun*". Therefore, when adultery occurs in the area of customary authority, the steps that are definitely taken are: *first*, the adultery couple called by pemangku adat (customary holders / *niniek mamak*) and collected by village officials (*tuo-tuo tengana*); *second*, if both of them have admitted that they have committed adultery, then the customary holders / *niniek mamak*, shara' officials and the village head will immediately determine sanctions in the form of fines/debts and the time of payment. *Third*, the time stipulated in customary law for adulterers in terms of paying the fine is 1x7, 2x7, 3x7 (3 weeks). If within the stipulated time the adulterer has not paid the fine then both of them will be expelled from the village for good because they are deemed not fulfilling and respecting the customary laws that apply in the village. Several forms of adultery that are sanctioned by customary institutions are: *first*, a married adulterer then commits adultery with someone else's wife, then the husband of that woman has the right to go to knees with a speech "*sepengucapan*" (in material form); *second*, sexual relations between these young people are determined based on the conditions and relationships between them as well; *third*, adultery with the boy's owns family and his mother. The name of the offence: *menikam bumi*. That means, child fornication with his mother; *fourth*, adultery with one's owns family father with daughter. The name of the offence: *mencakar telur*. That means, the father commits adultery with the child; *fifth*, the leader/ruler commits adultery with ordinary people. The name of the offense: *mandi dipancuran gading*. That means, the leader commits adultery with ordinary people; *sixth*, Adultery is an older sister with a younger sister. The name of the offense: *bersunting bunga setangkai*. that means, an adulterous brother with a younger sister.

4. Sanctions for adultery perpetrators in the customary law of Batanghari according to Islamic law

Adultery is sexual relations between a man and a woman, which is carried out without coercion, and without a legal marriage bond between the two. Islamic law explicitly views adultery as a heinous, despicable and cursed act. This view is agreed by the majority of scholars so that they point out that adultery is an act against the law, either *muhsan* or *ghayr muhsan*. Additionally, even if adultery was committed on the basis of consensual or non-loss, it would not reduce the number of sanctions that would be given, so the act of adultery was forbidden in any form and condition. Then, according to Sheikh al-Allamah Muhammad bin Abdurrahman ad-Dimasyqi and the *imams* of the *mazhab* agree that adultery is a major sin, so it is obligatory to have on the perpetrator. The sanctions imposed on adultery vary according to the condition of the offender. The conditions for adultery are divided into two, namely unmarried (*ghayr muhsan*) and married (*muhsan*). Adultery *ghayr muhsan* is meant for adultery committed by an unmarried person, while adulterer *muhsan* is an adulterer who is tied to marriage (Rasjid, 2010).

Abdul Qadir Audah argues that there are two elements in adultery, namely sexual intercourse which is forbidden and deliberate intercourse or intention against the law. The first element is completed when there is intercourse between genitals, even if a little (Muslich, 2005). The first basic element is QS. al-Mu'minin (23): 5-7 (Azhar (al), 2010). The second element is the intention to commit adultery, this element is completed when the perpetrator commits an act (intercourse) at the same time he realizes that the woman he has intercourse with is a woman who is forbidden for him. Thus, if a person deliberately commits a certain action, but he does not know that the action he is doing is *haram*, then he cannot be given sanctions. Furthermore, Audah pointed out that to be sentenced to adultery, the perpetrator of adultery must meet several conditions, namely: being sane, mature (baligh), independent, and knowing the law of adultery (Audah, n.d.).

According to the customary law of Batanghari Regency, the perpetrator of adultery is considered to have two mistakes, namely guilt against the entire community and guilt against Allah SWT. Guilty to the community because he is considered to have caused a disaster for them and defamed the village, so he was punished by customary law. Guilt to Allah is clear because that act is strictly prohibited by Allah and is very severely threatened. Then the

adulterer is asked to repent according to the adage above, wrong in *syarak* to be converted because he has sinned against the Almighty, while the scope in Islamic law is broader and more specific, because adultery is one of the major sins, it must be given strict sanctions, giving sanctions even directly from Allah SWT.

The perpetrator of *zina ghayr muhsan* (unmarried) will be given two kinds of sanctions, namely: 1) the law of flogging (one hundred times), if a boy and a girl commit adultery, then they will be subject to punishment and times, this is based on the word of Allah in the QS letter. An-Nur verse 2: which means: "woman who commits adultery and man who commits adultery, then each one of them is a hundred dali dera, and do not have mercy on both of them prevent you from (practicing) the religion of Allah, if you believe to Allah, and the Hereafter, and let (the implementation of) their punishment be witnessed by a group of believers." Penalty is a punishment *hudud*, namely a punishment determined by religion, therefore a judge may not reduce, increase or delay the implementation or replace it with another sentence. The provision of *syarak* regarding the punishment of flogging is the right of Allah or the right of the community, so that governments or individuals are not entitled to provide forgiveness (Muslich, 2005); 2) the sanction of exile (for a year), the scholars have different opinions about this exile punishment. According to the *Mazhab* of Hanfiyah of thought that the sanction of exile is not mandatory, but they argue that an *imam* allows the priest to combine the sanction of 100 lashes and exile if it is considered to create *maslahat*. Thus, according to them, the punishment for exile was not *bad* but a punishment for *ta'zir* (Muslich, 2005).

Regarding the timing of the punishment, scholars have different opinions. The difference of opinion is whether the sanction of 100 lashes and one year of exile should be treated simultaneously or not. This problem was explained by Al-Jaziri as follows:

First, mazhab of Maliky: Maliky Scholars argues that a person who is unmarried and free then commits the crime of adultery must be sanctioned in the form of exile after being executed one hundred lashes. The isolation must be carried out for one year in an area far from the homeland. This is intended as an insult to the perpetrator and aims to keep him away from the location of adultery. If the implementation is still in its original place, it will become an object of humiliation, it will even cause other sins in the midst of society, such as gossiping about what they have done. Hence, exile is the best effort for both the perpetrator and society.

In addition, the punishment of exile does not apply to female adulterers, because it is feared that isolation of a woman will result in other negative things and slander. Therefore, Islamic law also prohibits women from traveling alone without a mahram. Thus that adulterous girl must stay at home and keep away from the crowd.

Second, mazhab of Shafi and Hambaly: Both of these *mazhab* argue that the adulteress of *ghayr muhsan* who are both free and mature people, then they are sanctioned a hundred lashes and exiled to a place far from their home. Thus, they are expected to feel the misery due to being far from their family and homeland because of the crimes they have committed. This kind of punishment was imposed by Abu Bakr, Umar, Usman and Ali, (Sya'rani (al), n.d.) so that some scholars say that this provision is *ijma'*. Umar bin Khatab once exiled the adulterer *ghayr muhsan* to Syria, while Usman went to Egypt and Ali to Basrah. (Mawardi (al), 1994) There were special provisions for the girl, where the girl had to be accompanied by a *mabram* who will accompany and take care of him in exile (Juzairi (al), 1996).

Third, the Mazhab of Hanafy: The Hanafy *mazhab* argues that the punishment for adultery *ghayr muhsan* which "is in the form of a hundred lashes and exile cannot be confused, because the punishment for exile is not mentioned at all in Surah An-nur verse 2. The imposition of the punishment for exile means make additions to the text ". Therefore, according to this school of thought, the sanction of exile is only stipulated by the *hadith abad*. This is because the *hadith* cannot perfect the concept of punishment for adultery *ghayr muhsan*. This school/*mazhab* rests on the views of Imam Abu Hanifah who argues that exile is included as *ta'zir* and is closely related to the concept of benefit. As long as the principle of *maslahat* is not obtained by the implementation of exile, it is better to be postponed. Meanwhile, Imam Abu Hanifah emphasized that the exile was considered slander. In other words, avoiding slander by carrying out the punishment of exile.

Adultery *muhsan* is adultery committed by a man and woman who are legally married (husband or wife). The penalty for adultery *muhsan* is stoning until death. Stoning is a punishment imposed by both men and women by throwing gravel (coral) until death. The purpose of using a small stone is so that the perpetrator of this adultery can feel the pain gradually and so that the torture he gets lasts long and is worth the crime he has committed. The stoning penalty was carried out in front of the public to provide warnings and lessons for the community.

Islamic law does not consider the act of adultery as an offense on complaint but is considered a grave sin that must be punished without waiting for complaint from the husband or wife or the person concerned. Therefore, if the witness requirements have been met, the judge can decide the case for adultery. Witnesses in this case do not cover the possibility of husband or wife or other people. However, adultery in Islamic criminal law can be proven by one of three kinds of proof, namely as follows: first, the recognition of the perpetrator, the voluntary confession by the adulterer four times in detail and detail, and he does not retract his confession until it is carried out hudud on him. If he invalidates his testimony or runs away, at the same time there is no other way to prove it, then he is left alone. Second, four just people who testify, because four people are just is an absolute condition. The judge cannot decide the sentence for adultery based solely on the testimony of three people. However, a judge can convict hudud adultery if the perpetrator confesses his act, even though only one or two people witness it. The had was determined not because of the witness, but because of the perpetrator's own confession. If the perpetrator does not admit it, then the judge's decision can only be given based on the fairness of four men. Third, being pregnant, a woman can be sentenced to had zina with the signs of pregnancy without a legal marriage bond, at the same time she cannot present evidence that can erase the punishment from her. If the woman is able to show arguments that can eradicate adultery, then the had will not be imposed on her, such as a victim of rape, forced to have intimate relations with threats, or not knowing the law of adultery (Faruk, 2009).

Whereas in the customary law of Batanghari Regency, there are no specific requirements, but there must be proof and two witnesses. The fulfillment of evidence and witnesses who know about the act of adultery committed by two people who are married, then the two adulterers are summoned by the customary stakeholders (holding *adat*) and the village apparatus (*tuo-tuo tengana*) is gathered to make a trial against the two zian perpetrators. If both of them admit their actions, the customary holders will immediately impose a fine / debt sanction for both of them, along with determining the time of payment. The payment period is stipulated in customary law for married adulterers, namely 1x7, 2x7, 3x7; means 3 weeks. If within the stipulated time the adulterer has not paid the fine, then both will be expelled from the village for good. This is because the perpetrators do not fulfill and respect the customary laws / customs that apply in the village.

The Indonesian Ulema Council (MUI) in Batanghari Regency points out that the process of settlement and sanctions given to adultery perpetrators through the *adat* mechanism of Batanghari Regency is not the same as Islamic criminal law, such as the punishment of stoning to death for adultery *muhsan*. However, according to the MUI of Batanghari Regency that substantively it is not contrary to sharia, because in the Al-Quran or the *Sunnah* of the Prophet, there has never been anything that shows that imposing sanctions less than the punishment stipulated by sharia is prohibited, even Islamic law calls for perpetrators to be forgiven or to be punished and no punishment that exceeds the perpetrator's actions is allowed. As the Word of Allah in the letter, QS. Al-Isra verse 33: It means: "and do not kill the soul that Allah has forbidden (to kill him), but with a (reason) that is true and whoever is killed in wrongdoing, So Verily We have given power to the heirs, but do not heirs. beyond the limit in killing. In fact, he is a person who gets help. " (Azhar (al), 2010).

The sanctions for adultery *ghayr muhsan* are in the form of "*serbo duopuluh*", namely: one goat, twenty bushels of rice, twenty coconuts and a sweet scarf, three sack cloths (a shroud the size of a corpse), and being married is a form of perpetual apology from the perpetrator to society for his actions. Sanctions for the perpetrators of *zina muhsan* are in the form of "*serbo seratus*" in the form of: one buffalo, one hundred bushels of rice, one hundred coconuts and *selemek semanis*, three white sacks (a shroud the size of a corpse), and expelled for 2 years is also a form of perpetual apology to the public for his actions until death. In this context, the authors tend to share the same views with the customary system as previously explained. Substantially, customary institutions view that *zina* is considered a heinous act that can damage the balance system of natural ecosystems, such as household, family and community life, damage morals and religion, so that the act of adultery is threatened with a very severe punishment. Furthermore, the author's view regarding the sanctions "*serbo seratus*" for adultery *muhsan* and "*serbo duopuluh*" for *zina ghayr muhsan* aims to provide a deterrent effect and are afraid to repeat his actions again. Besides, for the perpetrator, the two types of punishment as a form of warning and learning for the community about adultery are very despicable acts, have a negative impact on others.

Conclusion

The litigation process for irregularities according to the customary law of Batanghari Regency is carried out with the principle of "*bajanjang naiak batanggo turun*". Therefore, when adultery occurs in the area of customary authority, the steps taken are: 1) adultery pairs are summoned by customary stakeholders (*ninik mamak*) and collected by village officials (*tuo-tuo tengana*) for trial; 2) if both have confessed, the customary stakeholders (*ninie mamak*), *syara'* officials and the village head will immediately determine the sanctions in the form of fines/debts by determining the time of payment; 3) preset times are 1x7, 2x7, 3x7 (3 weeks). If within the stipulated time, the perpetrator has not paid, then he will be expelled from the village, because it is considered that he does not respect customary law. The sanctions for the perpetrator of adultery in that customary law is not the same as the Islamic criminal law, namely the stoning penalty for adultery. However, substantively it does not contradict Islamic law because the Al-Quran and *Sunnah* do not show the prohibition of imposing sanctions that are less than the ones stipulated by sharia, even Islamic law calls for the perpetrator to be forgiven or to be given a punishment that does not exceed the perpetrator's actions.

References

- Ali, Z. (2009). *Hukum Pidana Islam*. Jakarta: Sinar Grafika.
- Azhar(al), M. (2010). *Al-Qur'an dan Terjemahan*. Bandung: Penerbit Hilal.
- Batanghari, L. A. K. (2015). *Hukum Adat dan Implikasi Dalam Kehidupan Masyarakat*. Jambi.
- Bisri, I. (2012). *Sistem Hukum Indonesia*. Jakarta: PT. Raja Grafindo.
- Damayanti, S. D., Harun, H., & Rasito, R. (2020). *Penerapan Sanksi Bagi Pelaku Pemerkoasaan Saudara Kandung Di Desa Pulau Kecamatan Muara Tembesi Kabupaten Batanghari Di Tinjau Dari Hukum Pidana Islam* (Doctoral dissertation, UIN Sulthan Thaha Saifuddin Jambi).
- Djubaedah, N. (2010). *Perzinaan Dalam Peraturan Perundang-undangan di Indonesia Ditinjau dari Hukum Islam*. Jakarta: Kencana.
- Doi, A. R. I. (1996). *Syari'ah the Islamic Law (Hudud dan Kewarisan)* (Zaimudin & R. Sulaiman, Eds.; Terj). Jakarta: PT. Raja Grafindo Persada.
- Faruk, A. (2009). *Hukum Pidana Dalam Sistem Hukum Islam*. Bogor: Ghalia Indonesia.
- Irfan, N., & Masyrofah. (2013). *Fiqih Jinayah*. Jakarta: Imprint Bumi Aksara.

- Juzairi(al), A. (1996). *Al-Fiqh 'Ala Madzhab Al-arba'ah* (Jil. V). Beirut: Daar el Fikr.
- Mawardi(al), A. H. A. B. M. B. H. (1994). *Hawi Al-Kabir* (Jil XVII). Beirut: Daar el Fikr.
- Mayasari, R. (2010). *Pelaksanaan Sistem Bagi Hasil Pemeliharaan Ternak Menurut Hukum Adat Di Kecamatan Seluma Selatan Kabupaten Seluma*. Bengkulu: Universitas Bengkulu.
- Muhammad, B. (1991). *Pokok-pokok Hukum Adat*. Jakarta: Pradnya Paramitha.
- Munajat, M. (2004). *Dekonstruksi Hukum Pidana Islam*. Yogyakarta: Logung Pustaka.
- Munawwir(al), A. W. (1997). *Kamus Al-Munawwir Arab-Indonesia Terlengkap*. Yogyakarta: Pustaka Progresif.
- Muslich, A. W. (2005). *Hukum Pidana Islam*. Jakarta: Sinar Grafika.
- Nawawi, B. (2012). *Mediasi Penal Penyelesaian Perkara Pidana Di Luar Pengadilan*. Semarang: Pustaka Magister.
- Putra, C., Ash-Shiddiqi, M. H., & Rasito, R. (2019). *Penetapan Sanksi Adat Terhadap Pelaku Zina Menurut Pandangan Hukum Islam Dan Hukum Positif (Studi Kasus Di Desa Sungai Ruan Ulu Kecamatan Maro Sebo Ulu Kabupaten Batanghari)* (Doctoral Dissertation, Uin Sulthan Thaha Saifuddin Jambi).
- Rasjid, S. (2010). *Fiqh Islam* (Cet. 47). Bandung: Sinar Baru Algensindo.
- Rokhmadi. (2015). *Hukum Pidana Islam*. Semarang: CV. Kaya Abadi Jaya.
- Rusydi, I. (2007). *Bidayatul Mujtahid* (I. G. Said, Ed.; Terj, Jil.). Jakarta: Pustaka Amani.
- Sabiq, S. (1984). *Fiqh Sunnah* (Terj, Ed.; Jil. 9). Bandung: PT. Al-Ma'arif.
- Santoso, T. (2003). *Membumikan Hukum Pidana Islam*. Jakarta: Gema Insani Press.
- Sapromo, A. (2013). *Budaya Hukum dan Kearifan Lokal Sebuah Perspektif perbandingan*. Jakarta: Fakultas Hukum Universitas Pancasila Press.
- Segaf, Q., Ash-Shiddiqi, M. H., & Maryani, M. (2019). *Sanksi Pidana Adat Tentang Zina Dalam Persepektif Hukum Islam Kecamatan Pelayangan Seberang Kota Jambi* (Doctoral Dissertation, Uin Sulthan Thaha Saipuddin Jambi).
- Shihab, M. Q. (2008). *Tafsir Al-Misbah: Pesan, Kesan, dan Keserasian Al-Qur'an* (Vol. 9, Ce). Jakarta: Lentera Hati.
- Soekanto, S. (2002). *Hukum Adat*. Jakarta: PT. Raja Grafindo Persada.
- Syafi'i, I. (n.d.). *Al-Umm* (Juz VI). Beirut: Daar el Kutub el 'Ilmiyah.
- <https://batangharikab.bps.go.id/> (Accessed 9/01/2020)

Interview

Amir, Hanafi, Muzamil (2020, Januari 2). Wawancara pribadi

Datuk Yusuf Madjid (2019, Desember 12). Wawancara pribadi

Hanafi, (2019, Desember 12) Wawancara pribadi