



TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 25, 2021

**A new decade
for social changes**

www.techniumscience.com

ISSN 2668-7798



9 772668 779000

Loading of the Lokika Sanggraha traditional delication in the establishment of the Book of Law National Criminal Law

I Made Artana, Made Warka, Otto Yudianto

Faculty of Law, Universitas 17 Agustus 1945 Surabaya

imadeartana.fh@gmail.com

Abstract. This type of research uses normative legal research. This violation of Lokika Sanggraha in the field of decency hasn't been regulated in the Criminal Code, so legal reform is needed. Criminal law reform has a very important meaning, namely from a political, sociological and practical point of view. According to the political aspect, the independent state of Indonesia should naturally have its own Criminal Code. This is seen as a symbol and is a pride of a country that has been free from the snares of political colonialism. According to the sociological aspect, the regulation in criminal law is a reflection of the political ideology of a nation where the law is developing and according to the practical aspect, referring to the official text in the KUHP which is now in effect in Dutch, of course this will have the potential to be misinterpreted. So from this point of view the current Criminal Code must be formed with the National Language, namely Indonesian. Lokika Sanggraha customary criminal offenses with decency offenses in national criminal law both in the Criminal Code and other positive laws, the fact is that there is no single article that regulates these customary criminal offenses in positive law in Indonesia or national criminal law.

Keywords. traditional, lokika sanggraha, criminal law

Introduction

The cause of the birth of the Lokika Sanggraha Customary Delict is due to: (1) breaking a promise by a man to a woman who has been sexually assaulted until she becomes pregnant and doesn't want to be responsible, the aim is to guarantee the rights of the woman who have been denied by the man, so that cases of children born without the acknowledgment of their biological father.

The offense of Lokika Sanggraha is still being maintained in Bali as a form of violation of laws and norms that live in society. This is because the regulations in the Criminal Code (KUHP) have not accommodated the elements of the Lokika Sanggraha customary offense.

Lokika Sanggraha is an act carried out by a man who wants (a service to satisfy lust) a woman to become pregnant and then does not marry the woman concerned, this act is contrary to the Lokika that every pregnancy should be celebrated for the sacred value of pregnancy and the certainty of the status of the child born from the pregnancy is legal. (Kaler, 1983) Juridically, that the articles on decency crimes in the Criminal Code don't regulate the Lokika Sanggraha customary offense so that in the application of the article it cannot be imposed on the perpetrator of the Lokika Sanggraha customary offense. The Lokika Sanggraha customary offense is a customary offense that has no equivalent or comparison in the Criminal Code. The traditional

offense of lokika sanggraha in the Balinese traditional community is still alive and still being maintained. If there is a violation of the customary offense of lokika sanggraha, the District Court in its decision always relates it to the Emergency Law No. 1 of 1951. The court's legal basis in examining the customary crime of Lokika Sanggraha is based on the Law Drt. No. 1 of 1951 which provides 3 criteria for enforcing customary criminal law:

1. In the case of a customary crime which has no subdivision in the Criminal Code, it is considered to be punishable by a maximum imprisonment of three months or a maximum fine of Rp. 500.00 (five hundred rupiah);
2. Can be sentenced to a maximum of ten years in prison if the customary sanctions are very severe, and
3. If there is a comparison in the Criminal Code, sanctions are always applied similar to the Criminal Code.

According to the sociological aspect, acts where men do not want to be responsible for their partner's pregnancy are seen as crimes. The community views that irresponsible actions as evil deeds even though they are not crimes in the juridical sense.

However, in judicial practice, the customary crime of Lokika Sanggraha is a complaint offense in which the Lokika Sanggraha crime can only be prosecuted in court if the woman or the woman's family complains to the authorities where previously the family complained the problem to the traditional village prajuru to get a formal settlement. kinship is that the man is responsible for the pregnancy of the woman.

Problems faced by Balinese people often occur in Lokika Sanggraha, if it is related to the decency aspect, it will always be related to morals. Moral contains a broad understanding as human character, social relations and human ethics.(Tomy Michael, Abdul Rachmad Budiono, Moh Fadli, 2020) Moving on from the above background, a problem formulation is proposed which consists of What is the urgency of loading the Lokika Sanggraha offense in the Criminal Code? And how is the concept of setting the Lokika Sanggraha offense in the Criminal Code?

Research Method

This type of research uses normative legal research.(Michael, 2020)

Results And Discussion

The urgency of loading the Lokika Sanggraha offense in the Criminal Code

One form of violation in the field of decency in Bali is what is called Lokika Sanggraha. Violations in the field of decency by the Balinese are categorized as customary crimes (adat offenses). Basically a customary crime (delict) is an act that violates the feelings, justice and decisions that live in society, causing disturbance of peace and balance in society and can cause a reaction of indigenous peoples.

This statement is reinforced by the results of research by A.A Ngurah Yusa Darmadi, stating that the Lokika Sanggraha customary offense is a form of offense, a custom that still lives in Balinese society.(Sinta, 2021) Authentic formulation of this customary offense can be found in the Book of Adi Religion, as well as being included in many Awig-awig in Pakraman Village. Implementation of customary obligations against the perpetrators of the Lokika Sanggraha offense based on the case and case analysis above that the perpetrators are not subject to customary obligations and are only subject to prison sentences. So that the shock will still occur as long as the restoration of the balance of the cosmic nature has not been carried out. The application of the Lokika Sanggraha customary offense in judicial practice is based on Article 359 of Adi Religion in conjunction with Article 5 paragraph 3b of the Emergency Law Number

1 of 1951. Thus, the principle of legality adopted in the national criminal law has shifted from the principle of formal legality to the principle of legality materials.(Darmadi, n.d.)

From a sociological point of view, the regulation in criminal law is a reflection of the political ideology of a nation in which the law develops. (Gumilang et al., 2019) This means that the social and cultural values of the nation receive attention in the regulation of criminal law. The measure in criminalizing an act is also related to the values and collective views that exist in society about what is good, what is right, what is useful or vice versa. Several provisions in the current Criminal Code don't accommodate the decisions of the Indonesian nation in the implementation of criminal law so that the urgency of reforming criminal law is, among others, as an effort to describe the sociological values of a criminal law rule that can be in line with the needs of the nation.(Subrahmaniam Saitya et al., 2020)

From a practical point of view, referring to the official text in the current Indonesian Criminal Code in Dutch, of course, this has the potential to be misinterpreted. So from this point of view the current Criminal Code must be formed with our National Language, namely Indonesian.

In Article 284 of the Criminal Code, a person who has sexual intercourse or intercourse outside of marriage on the basis of consensual in principle is not punished, unless it is proven that there is adultery (one of the parties is married). Therefore, efforts to reform criminal law are very urgent because in addition to being a basic need for the community in order to create fair law enforcement, it is also a means of overcoming crime.

Criminal law reform according to Barda Nawawi(Arief, 2011) the essence of a criminal law reform is closely related to the background and urgency of holding criminal law reform itself. The background and urgency of criminal law reform can be viewed from sociopolitical, sociophilosophical and sociocultural aspects or various aspects of law enforcement policies. Legal reform must also essentially be a manifestation of the renewal of the aspects and policies that underlie it.

The relevant reasons why the offense of decency or what in the concept of this research is called the offense of Lokika Sanggraha deserves to be included in the renewal of the concept of the Criminal Code:(Reksodiputro, n.d.)

1. Criminal law is used to affirm or re-enforce the basic social values of social life in the unitary state of the Republic of Indonesia, imbued with the state philosophy and ideology of Pancasila.
2. As far as possible, criminal law is only used in circumstances where other means of carrying out social control cannot be expected to be effective and
3. Criminal law that has used the previous concept must be limited in a way that minimally interferes with individual rights and freedoms without reducing the need for protection of collective interests in a modern democratic society.

The concept of setting the Lokika Sanggaraha offense in the Criminal Code

Recognition of the existence of customary law can also be found in Article 6 paragraph (1) of Law Number 39 of 1999 concerning Human Rights (Law No. 39 of 1999) that "in the context of upholding human rights, differences and needs in the legal community Customs must be considered and protected by law, society and government".(Michael & Kleden, 2018)

Currently, the Lokika Sanggraha sanction has not been regulated in the Criminal Code.(Sarmita, 2015) Such a situation certainly doesn't provide a sense of justice to the community, because the criminal threat for customary crimes as regulated in Law Drt No.1 of 1951 is very light. Even though this act by the customary law community is a despicable act and is not justified by custom and religion. In addition, the court has never imposed customary

sanctions in its decisions because it is not regulated in the Criminal Code.(Widnyana, 1995) Or in other words, the application of the Lokika Sanggraha customary offense in judicial practice is based on Article 359 of Adi Religion in conjunction with Article 5 paragraph 3b of the Emergency Law Number 1 of 1951.

Thus, the principle of legality adopted in national criminal law has shifted from the principle of formal legality to the principle of material legality. Imprisonment (criminal) only for the perpetrator of the Lokika Sanggraha customary offense can't be said to be able to restore the disturbed balance of indigenous peoples, because people's feelings (in a supernatural way) are still felt to be tarnished and the community's sense of justice is still disturbed.

If it's related to national law, that the embodiment of the existence of customary law in national law in its development has been regulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (Law No. 48 of 2009) stating "Judges and Judges The constitution must explore, follow, and understand the legal values and sense of justice that live in society". This provision is interpreted that the source of the rule of law that applies to judges in handling a case does not only come from positive law in national laws and regulations, but also accommodates laws that live in society. So that in the event that the judge doesn't find the rule of law in a case he is handling because there are no provisions of the law that regulates it, the judge is obliged to explore the legal values that live in society.

Basically the legal system in Indonesia also regulates the issue of adultery. Adultery law in Indonesia has its own polemics from the provisions to the application of sanctions. The regulation of adultery and sanctions is very clear that Article 284 of the Criminal Code only regulates the issue of infidelity, in which the article only applies if one of the perpetrators or both are still bound by a legal marriage with another person. Then in paragraph (2) explains adultery is a violation of complaints, which can only be prosecuted if the legal partner objected or complained.(Suswanto et al., 2018)

The future existence of customary law which is criminal in criminal law in Indonesia must be based on the principle of *legality*. If you want to compare the *Lokika Sanggraha* customary crime offense with the moral offense in the national criminal law, both in the Criminal Code and other positive laws, the fact is that there is not a single article that regulates these customary criminal offenses in positive law in Indonesia or national criminal law. If the *Lokika Sanggraha* is related to Article 284 of the Criminal Code, there are similarities and differences. The similarity is that both are acts in the form of sexual relations outside a legal marriage, and both are actions that can be punished. The difference is, in adultery according to Article 284 of the Criminal Code, one party, or both, is bound in a marital relationship, while in the *Lokika Sanggraha* both parties can't be bound in a marital relationship. In addition, in *Lokika Sanggraha* an important element is that the act results in pregnancy, while in adultery, the act has fulfilled the elements as a criminal act, regardless of causing pregnancy or not.(Triwinaya, n.d.)

The results of the above research, supported by the results of the research of Anak Agung Linda Cantika, state that in Bali there are *Lokika Sanggraha* customary offenses which in positive law provisions in Indonesia don't regulate the elements of *Lokika Sanggraha* customary offenses. Customary law is a law that grows and develops in people's lives, so it is important to reform national law by including the *Lokika Sanggraha* customary offense as a form of the existence of customary law in national law. That the *Lokika Sanggraha* customary offense will be adopted into the draft criminal code law (RUU KUHP) in Article 483 paragraph (1) letter e whose application of criminal sanctions must also be adjusted to the customary criminal offenses that will be included in the Draft Criminal Code.

Conclusion

This violation of Lokika Sanggraha in the field of decency hasn't been regulated in the Criminal Code, so legal reform is needed. Criminal law reform has a very important meaning, namely from a political, sociological and practical point of view. According to the political aspect, the independent state of Indonesia should naturally have its own Criminal Code. This is seen as a symbol and is a pride of a country that has been free from the snares of political colonialism. According to the sociological aspect, the regulation in criminal law is a reflection of the political ideology of a nation where the law is developing and according to the practical aspect, referring to the official text in the KUHP which is now in effect in Dutch, of course this will have the potential to be misinterpreted. So from this point of view the current Criminal Code must be formed with the National Language, namely Indonesian.

Lokika Sanggraha customary criminal offenses with decency offenses in national criminal law both in the Criminal Code and other positive laws, the fact is that there is no single article that regulates these customary criminal offenses in positive law in Indonesia or national criminal law.

References

- [1] Arief, B. N. (2011). *Bunga Rampai Kebijakan Hukum Pidana: (Perkembangan Penyusunan Konsep KUHP Baru)*. Kencana.
- [2] Darmadi, A. A. N. Y. (n.d.). *Delik Adat Lokika Sanggraha Dalam Kaitannya Dengan Pembaharuan KUHP*.
- [3] Gumilang, D., Yudianto, O., & Setyorini, E. H. (2019). LEGALITAS SURAT KUASA YANG DITERBITKAN SEORANG BURON. *Jurnal Hukum Magnum Opus*. <https://doi.org/10.30996/jhmo.v2i2.2497>
- [4] Kaler, I. G. K. (1983). *Butir-Butir Tercecer Tentang Adat Bali*. Bali Agung.
- [5] Michael, T. (2020). HUKUM TATA NEGARA DARURAT CORONA DI INDONESIA. *Mimbar Keadilan*. <https://doi.org/10.30996/mk.v13i2.3468>
- [6] Michael, T., & Kleden, K. L. (2018). MENYOAL PEMAHAMAN HAK DALAM PRINSIP-PRINSIP YOGYAKARTA 2007. *DiH: Jurnal Ilmu Hukum*. <https://doi.org/10.30996/dih.v0i0.1794>
- [7] Reksodiputro, M. (n.d.). *Menyelaraskan Pembaruan Hukum, Komisi Hukum Nasional*.
- [8] Sarmita, I. M. (2015). Lokika Sanggraha: Pengaruhnya Terhadap Aborsi dan Kesehatan Reproduksi Remaja Perempuan Bali. *Media Komunikasi Geografi*, 16(1).
- [9] Sinta, A. (2021). EKSISTENSI LOKIKA SANGGRAHA SEBAGAI DELIK ADAT BALI DALAM HUKUM PIDANA INDONESIA. *De Juncto Delicti: Journal of Law*, 1(1). <https://doi.org/10.35706/djd.v1i1.5469>
- [10] Subrahmaniam Saitya, I. B., Pasek Subawa, I. M., & Suastika Arimbawa, I. K. (2020). Tindak Pidana Kekerasan Seksual Terhadap Anak Menurut Hukum Hindu. *Kamaya: Jurnal Ilmu Agama*, 3(2). <https://doi.org/10.37329/kamaya.v3i2.436>
- [11] Suswantoro, S., Suhartono, S., & Sugianto, F. (2018). PERLINDUNGAN HUKUM BAGI TERSANGKA DALAM BATAS WAKTU PENYIDIKAN TINDAK PIDANA UMUM MENURUT HAK ASASI MANUSIA. *Jurnal Hukum Magnum Opus*. <https://doi.org/10.30996/jhmo.v0i0.1768>
- [12] Tomy Michael, Abdul Rachmad Budiono, Moh Fadli, I. P. (2020). Legal Interpretation Will Degrade President's Martabate and/Vice President in Achieving Legal Satisfaction. *Technium Soc. Sci. J.*, 12, 71.
- [13] Triwinaya, E. (n.d.). Delik Adat (Bali) Lokika Sanggraha Dihubungkan dengan Pasal 284 KUHP. *Jurnal Kertha Widya 2, No. 1, (2014)*.

- [14] Widnyana, I. M. (1995). *Eksistensi Tindak Pidana Adat dan Sanksi ADat Dalam Kitab Undang-Undang Hukum Pidana (Baru), dalam edisi Bunga Rampai Pembangunan Hukum Indonesia*. Eresco.