

The Position Medical Forensics and Visum Et Repertum in Adultery (Overspel) Cases in the Jenang Kutei Traditional Trial in Bengkulu, Indonesia

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Abstract

Proving is the action of presenting legally valid evidences by the Rajang Lebong customary judge to inspect cases of adultery (overspel), to achieve the truth according to the forensic science. This research uses a sosiological method with a descriptive-analysis approach regarding the forensics' expert information and the position of visum et repertum in customary trials in the case of adultery. The aim of this research is to understand the real position of forensic experts and visum et repertum in the Rejang Lebong traditional trials. This research shows that the position of the forensics' expert information of evidences and visum et repertum are accepted as proof in overspel cases.

Keywords: *medical forensics, visum et repertum, adultery (overspel) cases*

Introduction

Recognition towards customary law has just been explicitly expressed in the second amendment of the 1945 Constitution article 18B paragraph (2).⁽¹⁾ According to Soerojo Wignjodipoero, the sustainability of customary law is maintained by the decisions of the indigenous people, particularly the ones from the authoratives who are in charge of the implementation of legal actions.⁽²⁾

Ethnic customary law is an indigenous law which is applied to certain communities or some particular ethnic communities. While in Islamic law, it is acceptable for customary law to be applied based on the belief of the people. Oji continued that the implementation of the legal dualism was basically influenced by the British colonial law:⁽³⁾ So, in other words, the image of Indonesians was formed and built from the environmental image of indigenous people.⁽⁴⁾

In the Rejang Lebong community, customary issues are usually resolve through a traditional institution

known as the *Jenang Kutei* Customary Institution. Aside from issuing regulations concerning *Jenang Kutei* court, the Rejang Lebong district government also issued regulations regarding law enforcement from *Jenang Kutei*, which are the village judges and other customary officials.

This can be referred into Regent Decree No. 152 of 2009 concerning the Appointment of the Village Consultative Body/*Badan Musyawarat Adat* (BMA) in Rejang Lebong Regency during 2009-2012 term. Aside from appointing Indigenous People Members, the Rejang Lebong Regency Government appoints a customary Judge through the Regent Decree No. 153 of 2009 concerning the Appointment of *Jenang Kutei* (Village Judges) in Rejang Lebong Regency in the 2009-2012 Service Period.

Problems solved in *Jenang Kutei* are ranged from mild to moderate criminal cases, such as theft, fights, to adultery and cases involving other civil matters. Regarding the adultery or overspel cases, according to the custom, in its settlement at the *Jenang Kutei* institution, the perpetrators will usually be chastised with the purgatorial ritual.

Rape is a case which is rather confounding to prove despite the whole amount of evidences which have been

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examined and collected. In order to gain legal proof that a rape has indeed been committed, Forensic Medicine holds a major role in conducting examination for the medical explanation regarding the said occurrence. This study aims to determine the management of Forensic Medicine in proving rape cases in *Jenang Kutei* customary trial in Rejang Lebong, Bengkulu. Based on these issues, the writer would like to examine the role of Forensic Medicine and forensic expert explanation in proving cases of sexual violence crimes in *Jenang Kutei* customary trial in Rejang Lebong, Bengkulu, Indonesia.

Methods

This research is based on legal research which is conducted with a qualitative non-doctrinal approach.⁽⁵⁾ The research typology which is recently known as socio-legal research.⁽⁶⁾ The aim of using this approach for this research is to see the relationship between legal factors and extra-legal factors related to the object under study.

Findings and Discussion

Orientation towards Harmony Values and processes which are abundant of Discussion Values and Kinship Values are the real representation of the local community. Karolus mentioned that for the indigenous people, they instead looked at the issue of peace as an inseparable part of the dispute resolution process (the judicial process).⁽⁷⁾

The existence of *Jenang Kutei* as a customary institution and *Kelpeak Ukum Adat Ngen Riyen Ca' o Kutei Jang* as a guideline for the Rejang tribe community, repeating what Von Savigny as *Volkgeist* or a nationalist. Law is a reflection of *Volkgeist* which is a human struggle with space and time. *Volkgeist* is an immanent, contextual, and local concept.⁽⁸⁾

As for those who are authorized to impose sanctions are *Jenang Kutei* (Peace Institution), which is a customary institution with special authority by indigenous people to resolve any issue of customary rules and/or customary law violation and is decided by a customary judge.

In *Kelpeak Ukum Adat Ngen Riyen Ca' o Kutei*, there are several “*cepalo*” (actions and words of someone who violates customary rules) related to overspel cases, as well as the provisions which, if violated, may be imposed for sanctions, which includes:⁽⁹⁾

Cepalo bayang awak (counfounding body position/ caught overspel), *Asen Maling* (elopement), *Bemaling magea kuwa'ei* (elopement without parents knowing)

Menebo (a guy lures a girl on a runaway without clear motive and nowhere to go, under presumption they have committed something which are prohibited by their religion and custom).

Regarding legal culture, Lawrence M. Friedman interpreted it as values, ideas, attitudes, and behaviours related to law. Because of the complexity of the matters regarding judges and the court, using merely legal sociology and legal anthropology is not sufficient for the theoretical framework, hence the forensic science involvement.⁽¹⁰⁾

Forensic in Indonesia is related to the court and in law may be interpreted as the result of the examination required in proceedings in court. Forensic science is a science related to crime or in other words, it has roles in solving criminal cases.⁽¹¹⁾ The sciences related to forensic include forensic medicine, forensic chemistry, forensic physics, criminology, forensic psychology, and neurology. Forensic roots from the word *forum* which means comprehending the main problem of the object of study and forum itself is a meeting area in the era of ancient Rome for a trial⁽¹²⁾.

In the Rejang Lebong community, the solving violations of Adultery Law has relied on witnesses, particularly those who bust and capture overspel perpetrators. As the time goes by, the customary judge of *Jenang Kutei* has conditioned in receiving forensic elements which is a multidisciplinary science to apply biology, chemistry, psychology, medicine and criminology to verify the overspel case by examining physical evidences in overspel cases.

After being proven guilty in customary law for overspel case (*NGA'EM*), the convicted person will be sentenced as follows: If the victim is pregnant, the sentence will be conducted after the child is born (approximately after 40 (forty days) then *KUTEI* will be sanctioned). But if the overspel case is known by community immediately, *KUTEI* will be instantly sanctioned upon them.

Former Chair of the RL District Customary Council/*Badan Musyawarah Adat* (BMA), A Rauf said, Rejang custom is a spiritual treasure which has to be preserved and developed or better known by the term “*Adat Nak Beak Nioa Pinang*”. Related to the technological developments, the evidence via forensic medicine, expert statements and *visum et repertum* are accepted in *Jenang Kutei* customary trial for overspel cases, rape cases, etc.

Rauf also explained that through the said evidences, if the perpetrators are proven guilty in committing serious *cepalu* such as an overspel, they are required to sacrifice a goat. The said punishment is known as a purgatorial ritual called *Empat Petulai* in order to purify the village which commences by sacrificing a goat.⁽¹³⁾

He admitted that the forensic medicine and *visum et repertum* procedure fields are used as legal basis in resolving cases which occur within society is because customary law does not stand against the development of technology or the modernity. The relationship between the existence of customary law alongside with its effectiveness will make customary law acknowledge verification methods in accordance to science and technology. In other words, the effectiveness of customary law may allow the law to achieve its goal, which includes for it to be applied and functioned through the help of forensic science and expert statements⁽¹⁴⁾.

Regarding overspel and rape cases, judge conviction in adjudicating in customary law is based on evidences at the trial. And via *visum* and forensic science, evidences related to human physical conditions are also acknowledged to be present at the trial. Customary judges admit that customary law requires assistance from other scientific disciplines, especially related to injury, health and lives of people in overspel cases. And forensic doctors may prove those conditions more precisely as the evidence.

The verification with the help of forensic doctor as witness at the trial in the form of *visum et repertum* written statement which explains the bodily condition of the *overspel* (adultery) defendant, concerning semen, bodily injuries, or sexual activity traces, and based on these then the Judge of *Jenang Kutei* remained guided by *Kelpeak Ukum Adat Ngen Riyen Cao Kutei Jang* passes his sentence. If there is a man who committed adultery (overspel perpetrators), the man is subject to customary punishment/customary fines namely:

(1) *Mencuci Desa (cleansing the village)/menepung matahari (pulverizing the sun). This should not be carried out at night⁽¹⁵⁾. Menepung matahari means paying the greatest village fines which is the same as murder and adding (2) Fines from the woman according to her demands which the man affords to pay. (3) The perpetrators are flogged with sticks as many as 100 strands and flogged 10 times⁽¹⁶⁾.*

In this research, the author took an example of the medical forensic implementation towards the case of adultery which caused extramarital pregnancy but the man didn't take the responsibility, namely Warni *binti* (the daughter of) Ujang Damori from Karang Jaya village, Bermani Ulu sub-district, in the case of overspel. The examination result from the forensic expert who was asked for the statement and the examination, finally proved the pregnancy even though she wasn't legally married so that the customary judge of *Jenang Kutei* sentenced her guilty for committing overspel. There was the verification of injury on the genital caused by blunt object and the semen was identical with that of the male defendant. Hence, the judge dropped the sanction in the form of a customary ceremony with the decision that cleansing-the-village ceremony must be carried out and it was required to slaughter a goat. But according to the provisions, when the goat-slaughtering ceremony was carried out, the goat's blood must be sprinkled to 4 (four) corners of the village and the two perpetrators would be hit by sticks with as many as 100 strands.

Additional punishment imposed on overspel perpetrators who are proved committing adultery, is parading them around the village as an example. It is an extra penalty for those overspel perpetrators. The offender usually obeys the punishment imposed because the evidence is strong and social sanctions await if the decision is not obeyed. The punishment for non-compliant families in carrying out the customary sanction is that the family will be given an excommunication punishment, in which according to Kadirman, their interactions will be socially restricted.⁽¹⁷⁾

Although the customary law and sanctions must still be carried out with the customary philosophy, but in this case it is known that in handling the verification it has also been received and acknowledged by other sciences, such as medical forensic. The perpetrators of adultery who have been through the procession of customary trial so that it comes to the punishment execution turn out that they also went through the forensic stages, through *visum et repertum*, sperm and seminal examination added with the testimony of forensic doctor. The sentencing, of course, cannot be ruled out because the evidence is strong enough and the customary trial has clear legitimacy in the community. The overspel perpetrators, of course, are underestimated and even laughed at by the people for the deeds they have done, and this will usually continue to be practiced to the newborn child later on because the child will usually necessarily be called "kampang"

(child from adultery).

The punishment given is still a punishment with a customary philosophy even though the customary law has received forensic verification. The philosophy is the belief that punishment is given so that the local residents are saved from disaster. Such disasters are for instance, they will have difficulty in earning a living, there will be a prolonged famine, the atmosphere of the community will continue to heat because many residents quarrel with each other, floods and even other unexpected disasters as a form of anger from the God Almighty.⁽¹⁸⁾

The customary trial realizes that the customary trial procession is not merely handled by traditional aspects, but it is also handled with the new elements in proving the criminal overspel cases to make it clearer⁽¹⁹⁾. The trial process through the assistance is able to handle the verification to the end of the case by the perpetrators based on bodily conditions examined by a forensic doctor. According to General Chief of Rejang Lebong BMA, Herman Firnadi, it is undeniable, so that the perpetrators will want to admit their crime, receive their punishment and are deterrent after serving the punishments so as to set an example for others not to repeat the same thing.⁽²⁰⁾

After going through the process of forensic verification and sentencing, they hold the village cleansing ceremony for the overspel defendant which was carried out in the traditional institution attended by many people. The offender certainly cannot avoid admitting his actions, considering that the evidence is very strong and cannot be refuted despite the embarrassment as conveyed by Susi Damayanti:⁽²¹⁾

“We who only saw are impressed with the trial process that has become more modern so that the defendant is not possible to evade with the existence of forensic evidences and the judge pass the sentence seeing the evidences.”

Conclusion

Medical forensic can be accepted as an evidence in handling overspel cases at the *Jenang Kutei* customary trial in Rejang Lebong in the form of *visum et repertum* examination and forensic expert's statement as in the general trial. The perpetrators who are proved guilty with the forensic verification cannot evade because the proof is modern, logical and strong as well as acknowledged by the parties in the form of forensic expert's statement and the result of *visum et repertum*

examination. The trial passes the verdict based on these proofs and then sentence them in accordance with the applicable customary law.

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