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Local Wisdom versus Legal Principles of Criminal Case Ruling in Indonesia

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Abstract:
The Code of Penal (Penal Code) Indonesia regulates the principle of legality, as contained in article 1, paragraph (1). Thus, according to this principle there is not an act that can be imprisoned unless it is set in the Act. However, in case of an act which according to the law in the society is a disgraceful act, prohibited acts, then such actions should dipadana. The judge may not refuse a case brought before it on the grounds of Law no set. But in the Court decision / Court must still contain any legal basis in the consideration of the legal decision either written or unwritten laws (laws that live in the community). It is clearly stipulated in the law on the judicial authority which is in Article 10 paragraph (1) of the Act 48 of 2009 and article 197 paragraph (1) the Book of Law Criminal Law (Penal Code).
Judge in carrying out its duties and functions in check, and prosecute an act that is not yet regulated in the Criminal Code and other written law, should be able to find in law who live in the community as the local wisdom in the local community. Furthermore, the judge determines the legal basis as well as elements of the criminal act to be used as a legal basis in the decision. In this case will result in the existence of a conflict between the application of the law of life as a local culture or local knowledge of local communities with the principle of legality. Therefore, the judge needs to consider whether the law who live in the community is still acknowledged its existence and has unrivaled / homology to the Criminal Code or other written pidan law, to determine which elements of the criminal act.

Keywords: *Legality, local wisdom, the criminal case*

1. Introduction

The Code of Penal (Penal Code) Indonesia formulated that there is not an act that can be imprisoned unless otherwise specified in the Act. This is known as the principle of legality, delictum crimen sine lege poenali as stipulated in article 1, paragraph (1) KUHP[1]. However, in reality there is real action has not been / is not regulated in the Act and the Criminal Code as written law is faced with the Court / Judge. Thus, if a magistrate judge who confronted him act it, would not be able to investigate and adjudicate only berdasarkaan principle of legality, because it certainly will not find a legal basis in both the Criminal Code and the Law of the other written. While in the Law on Judicial Power Number 48 Year 2009, which in Article 10 paragraph (1) states that: "The court banned refuse to examine, hear and decide a case filed on the grounds that the law does not exist or is less clear, it is obliged to examine and hear ". Based on the article 10 paragraph (1) of the Law on judicial power, then once in a particular case will be conflict between the authority of judges in adjudicating the principle of legality.

It is recognized that when in a state or a case, the law is unclear or incomplete set, then the judge should act on their own initiative to resolve / try the case by way of the creation of the law or legal discovery with various method[2]. Although various methods are available, but in criminal law are prohibited from applying criminal law by analogy with the methods of interpretation (nullum crimen sine lege stricta) that no provision of the criminal unless narrowly or strictly defined in the legislation. So in the context of the present invention confirmed that criminal law should not be established as the new norm [3]. Nevertheless from several court decisions reflected in the application of law in the society as a cultural or local knowledge (which is not authorized in writing within the meaning of the principle of legality) in the case criminal decision [4]. Legal concepts of life in society refers to the unwritten law that the common law (customary law) which also covers criminal law custom [5].

2. Problems

Of several court decisions that are based on unwritten law which is the law of life as a local culture or local knowledge, then that becomes a problem in this case is:

1. What is the legal basis, the application of law in the society as the local culture in a criminal case verdict.
2. How does the judge considered to determine the fulfillment of the elements of the offense in its decision based on the law in the society.

3. Methods

This research is a normative approach to law and approach to the case in the Supreme Court's decision to apply the law in the society, in the decision on the criminal case. Thus the research data is secondary data derived from the legal materials, which is the primary legal materials, secondary and tertiary legal materials.

Data was analyzed using qualitative analysis, namely data from the legislation as the primary legal materials, relating to or governing laws that live in the community. Further analyzing the Supreme Court's decision to apply the law in the society as the local wisdom, in the criminal case verdict.

4. Discussion

4.1. The Legal Basis for the Application of the Law as a Local Cultural Life

In Indonesia, the Law of the highest level based on the hierarchy of Act of 1945. Therefore, based on this hierarchy, all legislation lesser must not conflict with the legislation a higher[7].

Among the legislation governing the enforcement of the law, living as a local culture or local wisdom in the community, which can be used as a legal basis is as follows:

1) Act of 1945

It is found in Article 18b paragraph (2) which reads:

"The State recognizes and respects units of indigenous communities and their traditional rights as long as they live, and in accordance with the development of society and the principle of the unitary state of Indonesia which is regulated by law".

2) Emergency Law No. 1 Tahun1951

It is stipulated in Article 5 paragraph (3) of paragraph (b), which reads:

"The Law of Civil Petition for a while even civilian criminal material law which until now apply to kaula-kaula autonomous regions and the people who once tried by a customary court, there remain valid for the subjects and the man-servant, on the understanding:

a. That an act under the law of life should be considered a crime, but are unequaled in the civilian criminal law book, it is considered punishable by no more than three months in prison and / or fines Rp.500,00 (five hundred rupiahs), ie as a substitute punishment if the punishment meted custom is not followed by the inmate and the replacement is considered equivalent by the judge with a condemned error.
b. That when the customary penalty imposed was conceivably the judge exceeded her with imprisonment or the premises aforesaid, the above error substitute the defendant may be punished as high as 10 years in prison. With the understanding that the judgment of the customary notion, the judge is not aligned anymore with the times must constantly mentioned above.
c. And that an act which according to the law that life should be considered a criminal act that is unparalleled in the civilian criminal law book, it is considered threatened with the same punishment with a sentence appeal is most similar to the criminal act.

Thus the provisions of Article 5 paragraph (3) sub b above it can be concluded that:

1. Acts that are criminal acts according to the law in the society (local).
2. The act is unparalleled in the Penal Code; then the penalties are not more than 3 months in prison.
3. If the act is unrivaled in the Criminal Code, the punishment the same as those threatened in the Criminal Code.

From the wording of the above provisions may also be known that actually sanctioned customary (adat punishment) is a major sanction in the case of acts that under the law of life is considered as an act that can be imprisoned, but there is no comparison in the Criminal Code. While the imprisonment of no more than three months and / or a fine Rp.500,00 (five hundred rupiah), it is a substitute for criminal if customary sanction is not obeyed by the convict[8]. Next to the recognition of a criminal act according to the law who live in society, based on the Emergency law No.1 of 1951, the criminal customary law is also important to learn. Although it is not possible for a writer is able to decipher the principles of the common law crime of all regions in Indonesia[9]. It can be concluded that the application of traditional criminal law is justified to act according to the law in the society is a crime, but if the act was unparalleled in the Criminal Code, the sanctions are tailored to the sanctions contained in the Penal Code.

3) Act No. 16 of 2004 (Law on the prosecutor's office)

It is governed by Article 8 paragraph (4) which reads:

"In carrying out its duties and authorities, prosecutors always act under the law with regard to religious norms, decency, morality, and must dig and uphold humanitarian values that live in the community and continues to maintain the honor and dignity of the profession (boldface author) ,

Therefore, based on the prosecutor's Law, the prosecutor in carrying out the duties and authorities are also required to dig and uphold local culture as the law of life in society.

4) Act No. 48 of 2009 (the Law on Judicial Power)

a. This is set out in article 5, paragraph (1) which reads:

"Justice and the Constitutional Court shall explore, and understand the values of law and justice in the society.

b. In Article 10, paragraph (1) which reads:

"The court banned refuse to examine, hear and decide a case filed on the grounds that the law does not exist or is less clear, but obliged to examine and hear".

From the wording of the two articles of Law About the power of Justice, suggesting that the judge / court in adjudicating criminal cases, should not be refused because the law does not exist or is less clear set of cases that confronted him, but the judge / court shall explore living law in a society where the case is being tried is. Judges must underlie the text of laws and make it as a starting point in the hearing, but not as an ending point. Good judge open your eyes and look at the system of law in all its nuances provisions and core values. In the context of the framework is generally a good judge gives the meaning of the text of a law in its decision. Good judge will not make a decision just by knowing something and basing on the law text only. Judges should recognize community, the

problem, and aspirasinya10. In other words, the judge / court should explore and recognize local laws or culture are in the midst of a society where judges / courts are handling a case. However, actions as they are implemented or embodied should be a criminal offense under the applicable law, in writing or not tertulis11.
c. In the provisions of article 50 paragraph (1) of Law 48 of 2009 on Judicial Power that specifies: The court's decision in addition must contain reasons and grounds of this decision, it also makes certain articles of the legislation in question or the source of the unwritten laws as a basis to prosecute.
The provisions of article 50 paragraph (1) of the Act 48 of 2009 mentioned above, signaling the assertion that the judge in deciding a case justified its discretion on the source of the unwritten laws. Article is a reform of the provisions of Article 197 paragraph (1) letter (f) KUHP12 where in the article did not specify the source of the unwritten law as the basis of alternative sentencing, but only confirmed laws undanganlah the basis of punishment or the legal basis of the decision. Thus the article 50 paragraph (1) of the Act 48 of 2009 as well negate the principle of legality contained in Article 1 paragraph (1) Criminal Code where no one can be convicted except under the provisions of criminal law that already exists.
Besides the legal basis nationally who are in Indonesia (as mentioned above), the application of customary law as a local culture in a society there is also in line with the Declaration of the United Nations on the Rights of Indigenous Peoples (United Nations Declaration on the Rights of Indigenous Peoples), which was passed on September 13, 2007. this is within Article and Article 34
Article 5 reads: "Indigenous peoples have the right to maintain and Strengthen Reviews their distinct political, legal, economic, social and cultural institutions, while retaining Reviews their right to Participate fully, if they so choose, in the political, economic, social and cultural life of the state ".
Article 34 reads: "Indigenous peoples have the right to promote, develop and maintain Reviews their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, Juridical systems or customs, in accordance with international human right standards ".
Thus the application of the law in the society as a genuine local culture of the local community is undoubtedly legal basis, both nationally and internationally.

4.2. Consideration of Justice to Determine the Elements of the Offense in Its Decision Based on the Law in the Society

In Indonesia, in reality the principle of legality itself experiencing growth. The principle of legality is no longer solely defined as crimen delictum sine lege, but also as a crimen delictum sine ius or not solely be seen as a principle of formal legality, but also the legality of the material, namely recognizing the criminal law customary, living law or laws not written as a source of law 13. Besides, it also recognized that there are limitations to the principle of legality, both limited the coverage related to aspects of ontology related to the substance or essence of the principle of legality 14. on the other hand the principle of legality is absolute limitations contained in the Criminal Code postscript WVS came from the Netherlands, of course, also many who are not in sync with the law who lived in Indonesian society. Especially now in the draft Penal Code already appear to have legal recognition in the society in a way defined it in Article 2 of the Draft Penal Code 15.
Furthermore, if the note and connected principle of legality set out in article 1, paragraph (1) Criminal Code, the Law On Judicial powers (Article 10 paragraph (1) of Law 48/2009), and Article 2 of the Criminal Code Bill 2015, in particular on their criminal acts no or unclear regulation (laws of life as a local culture in the community) then there will be issues to define the elements of the crime (offense) is. Because the judge in deciding a criminal case, it must clearly define the elements of the offense, both subjective elements (elements inherent in private actors), and the objective elements (elements that are beyond the self Performers) 16. While elements of the crime objective is contained in the law in the society, is not so clear in detail as is stipulated in the Criminal Code criminal. This will certainly bring legal consequences for a decision of the judge / court examining the case. Hence the book of the Law of Criminal Law, Law No. 8 of 1981 which in article 197 paragraph (1) letter (f) states that the decision of sentencing must contain clauses of legislation that became the basis of criminal prosecution or action and Article legislation -undangan being dasra law of the decision, accompanied by aggravating circumstances and mitigating the defendant. If it is not fulfilled, the resulting court decision (Judge) is null and void as specified in Article 197 paragraph (2) Criminal Procedure 17. Thus, judges examine, hear the criminal case, before dropping the decision must first be able to find a legal basis and determining the elements of the criminal act. So the decision handed down has no basis in law, both the written law and the unwritten law which is the local knowledge (law who live in the local community that relate to cases that took place).
There are times when it is the existence of customary criminal law raises the question, does not put the traditional criminal law is contrary to the principle of legality in Indonesian positive law? Keeping in the law of life for the people of Indonesia is not just knowing the law in terms of writing, but still recognize the law of living in a pluralistic society such, therefore to define an action which is considered a criminal offense customs and reprehensible and that there is no equivalent / equivalence / equal in criminal Code, applies a principle of legality is only an exception only, so still subject to criminal offenders though this action is no regulation in the criminal Code. The enactment of the principle of legality in criminal activities represents only eksepsionalitas only nature, as many acts categorized as criminal offenses indigenous and reprehensible nature, but there is no equivalent in the Criminal Code, so that if still not punished the perpetrators would have caused a sense of injustice as a reaction to traditional , which the state requires the judge to convict the culprit, although his actions are not formal "wederrechtelijk 18.
According Marjono Reksodiputro that the justification of living customary law makes it a source of Indonesian criminal law can also be sought in the task of a judge is obliged to seek justice. For this effort, the judge should maintain that someone is guilty of committing acts denounced by the community and deserves punishment shall be determined by lawmakers, and can also be based on

customary law in the society concerned. Judge obligation to seek justice can be seen also in other provisions of the Act prohibits the judicial authority judge refused to investigate and adjudicate a case filed, as well as its obligation to explore the values that stand 19.

Further below will stated instance verdict (ranging from a court ruling the country, high courts and the Supreme Court of the Republic of Indonesia) based on law in the society, the decision to make a judgment based on the punishment of life as a local culture or local knowledge, in areas where the case was going on and decided by the Court. Examples of this Court's decision is a decision to apply the law in the society as the local culture, which is used as a legal basis in the decision on the criminal case, both cases are comparable in the Criminal Code (as the written law) and which has no equal in the Criminal Code.

a. The case has no equal in the Penal Code

Supreme Court's decision related to the actual fornication does not meet the elements as stipulated in the Criminal Code, but the Court to decide based on the law in the society, the unwritten law. But on sanctions remain based on the type of sanctions contained in the Penal Code. In other words, the criminal action is unparalleled in the Penal Code but the sanctions imposed by the sanctions contained in the Penal Code.

The Supreme Court verdict in this case is a court decision toughen underneath (Banda Aceh District Court and the High Court of Banda Aceh), the convict against both by law to live in the community.

Supreme Court Decision 93 K / KR / 1976.20

The position of the case are as follows:

I accused Z binti M, aged approximately 19 years, the place of birth in the village of Tanjung, Mukim Khueh, district. Lhonga, Aceh Besar district, farmer job clove (parents participate), residing in the village of Nusa, Mukim Khueh Regency, Aceh Besar, Defendants are unmarried;

Accused II H bin H, aged approximately 26 years, the place of birth in the village of Nusa, Mukim Khueh, Kec.Lhonga, Aceh Besar district, farmer occupation, place of residence in the village of Nusa, Mukim Khueh Regency, Aceh Besar, the accused have not been married;

The lawsuit is filed in a court of the district court for allegedly:

That they, the accused IZ bint M and accused II H bin H, on Saturday on the date and the month shall be remembered with certainty, that at least in 1971, in a cottage byre and clove, the village of Nusa, possibility Khueh, Kec.Lhonga, or in one other place in the area of law Banda Aceh District Court, Defendants I and II have Accused of adultery between them on a whim with no coercion of either party as much as six times or more than one, causing pregnancy by visum et rpertum Banda Aceh Public Hospital dated 2 April 1971 No. 11/48/21 / RSU / 71, was accused I and II of the accused knows the act is prohibited by law, both criminal law, local custom or religious law, was accused I and II respectively have not been bound in a marriage. Where actions may be subject to the law as stipulated in Law 1/1951 Drt Article 5 (3) sub b jo. Article 284 paragraph (1) of the Criminal Code.

With regard Drt Law 1/1951 of Article 5 paragraph 3 sub b jo. Article 184 paragraph 1 of the Criminal Code, has been convicted of a felony as noted in the decision of the District Court that the injunction full reads as follows:

- Declare that the Defendants I M and Z binti Alleged bin H II H, guilty of criminal abuse each custom zina
- Punish The accused first with a prison sentence of 2 (two) months and the Accused II for five (5) months of imprisonment;
- Determine that the preventive detention already served by the Accused II predicted entirely as a punishment that has been lived;
- Punish The accused I and II are to bear the responsibility to pay the costs of this case;

Where the decision of the examination at the appellate level has dikuatkaan by the High Court in Banda Aceh with the decision of date 17 November 1975 28/1971 / PT, which amar full reads as follows:

- Receive an appeal from the accused-accused;
- Strengthening the Banda Aceh District Court date of June 15, 1971 51/1971 (S), which requested the appeal;
- charge fees that arise in the case of appeals to the accused-defendant;

Based on the decision of the High Court, Defendants I and II appealed to the Supreme Court with objections filed by penutut-appeal is principally as follows:

Objections of Cassation Prosecutor-I:

1. It is true that Prosecutor-Appeal I have copulated with-Cassation Prosecutor II since promised to marry later;
2. That family-Cassation Prosecution I have been trying to resolve both the Prosecutor-Appeal II do not want to be responsible;

Objections of Cassation Prosecutor-II:

1. That the Cassation Prosecutor-II did not accept the decision of the High Court of Banda Aceh on the grounds of Cassation Prosecutor-II never copulated with Cassation Prosecutor-I;
2. That the examination in the District Court erred in less careful and draw conclusions about the perpetrators;
3. That the Cassation Prosecutor-I often go out at night and bejar moral;

The Supreme Court in its decision has given consideration are as follows:

Regarding objections to the 1st and 2nd of Cassation Prosecutor-I:

That these objections can not be accepted, because it does not concern the issue in this case (irrelevant);

Regarding the objections of the prosecutor-Cassation II:

That objection to the 1st and the 2nd is also unacceptable, because of this the results of the assessment of evidence is the award of a reality, which can not be considered in an in cassation only with respect to non-realization of the rule of law or there is an error in the implementation or not implemented way of doing justice should be followed according to the law;

That based on his own knowledge, the Supreme Court argued that such fornication been examined by the Court of Customary advance;
That the offense of zina is a forbidden act regarding sexual intercourse between men and women, regardless of where it was committed public place or not, as required by Article 281 of Criminal Code, or apart from the requirement if one of the parties was married or not as intended by Article 284 Penal Code;
That in this case the alleged offense was customary adultery closer to Article 281 of the Penal Code Article 284 Penal Code as incomparable as intended by Article 5, paragraph 3 sub b Act 1 of 1951;
Whereas, therefore, in the Banda Aceh District Court the authority to examine / disconnects act according to customary law is regarded as a criminal act that has appeal in the Criminal Code;
Considering that based on the above matters cassation of the prosecutor-Cassation should be rejected by the District Court's decision fixing reinforced by the High Court for consideration on appeal tentaang customary criminal offense of adultery so that it reads as described below;
Noting Article 40 of Law 14/1970, Law 13/1965 and Law 1/1950
DECIDE
Reject the cassation of the prosecutor-Cassation: 1. Z binti M and the H 2 H bin;
Fixing the High Court verdict in Banda Aceh date of December 9, 1976 26/1971 / PT and the ruling of the District Court in Banda Aceh date January 15, 1971 No.51 / 1971 (S), so that it reads:
Stating the Accused 1. Z binti binti M and H 2. H; guilty of indigenous: fornication;
Punish the prosecutor-Cassation to pay court costs in all levels of the judiciary;
Of its decision on this case it appears that the judge at both the District Court, High Court and Supreme Court, have applied customary law in the case of fornication. It can be seen that the actions of Accused / Defendant I (girl called Z binti M), and the Accused / Defendant II (youth named H bin H) actually do not meet the elements of the offense as stipulated in the Criminal Code, namely Article 281 (that is, elements immoral acts in public places) and Article 284 (ie the perpetrator / perpetrators of participants who are still bound in marriage is legal). But the two men were still sentenced had committed adultery as an act forbidden by law to live in the community. Although the sanctions still refers to the existing sanctions in the Criminal Penal Code, which is being sanctioned Criminal Prison.
b. Case is unparalleled in the Criminal Code
Supreme Court Decision 195 K / KR / 1978
Supreme Court to hear the appeal, has submitted the following decisions:
IWS, + 21 years of age, residing in Banjar Delodtangluk, Sukawati village and sub-district, district Cianyar, level II Teachers' Training College Students Employment Singaraja;
The accused were brought to trial the District Court on a case by position as follows:
The accused mentioned above, on the day that can not be known with certainty, roughly the range in 1971, 1972, 1973, 1974, 1975, at least at a time ranging in years from 1971 up to 1975, housed home sanctions NKS in Delodtangluk, Village / District Sukawati, Gianyar Tk.II region, at least least in other places that still includes the jurisdiction of the District Court of Gianyar, Defendants repeatedly every chance you have sexual intercourse with NKS sanctions based on taste love between the Accused and NKS, where it inflicted causes the Accused with NKS NKS contain or are pregnant, continued without reason accused did not pass on his love or do not want to marry NKS to be his wife.
Violates Article: Logic Sanggraha (Customary Law Bali) jo. Article 5 (3) b Drt Law 1/1951, has been convicted of a felony as noted in the decision of the District Court, which amar full reads as follows:
1. Declare the defendant, IWS mentioned above, guilty of crimes Logic Sanggraha (Bali Customary Law);
2. Punish he was therefore with a prison sentence of 3 (three) months;
3. Punishing the defendant to pay the court fees as much as Rp 1.000, - (one thousand rupiah).
Against this decision an appeal has been filed by the accused, the application for which has been declared unacceptable by the High Court in London with tanggaal August 26, 1977 decision No. 14 / PTP / 1977 amar full reads as follows:
• Declare that the application will be checks in the appeals of the accused, IWS, the Gianyar District Court dated 12 April 1976 23 / Pid / Sum / 1976 can not be accepted;
• Punishing the defendant to pay all court costs incurred in the second level of the judiciary;
• Ordered a shipping official derivative of this decision along with its case file to the President of the District Court Gianyar;
Based on the decision of the Denpasar High Court The accused filed an appeal with keberataan is principally as follows:
That the District Court's decision not spoken in public, so that the decision is invalid and should be canceled;
Based on the appeal of the Supreme Court argued:
That objection can not be accepted because it was in the pretrial or trial of the District Court dated 12 April 1976 declared the trial open to the public, in addition to the verdict in this case can not be required examination in the appeals;
Considering that for the reasons described above, the application for the appeal must be rejected;
The ruling of the Supreme Court:
The Supreme Court has rejected the appeal of the prosecutor-appeal, the IWS;
Punish the prosecutor-Appeal to pay all court costs in this appeal level.
Of the two examples mentioned above decision, it seems clear that in Indonesia still recognize the existence and life of customary law, in the sense of the presence of several of the acts that are classified as criminal offenses adat (customary offense), although it is not

contained in the Criminal Code as criminal law is written. So with the recognition of customary law (law that live in the community) in Indonesia, including the crime of customary (adat offense). Then a act according to the local indigenous community can be considered reprehensible (unlawful material) even though the perpetrator is a formal act is not "wederrechtelijk". Thus it can not be used as an excuse for the perpetrator can not be punished.

In the case of customs violations that occurred in Bali as mentioned above, that there is an act that qualifies as a criminal offense known indigenous "Sanggraha Logic". Definition of "Logic Sanggraha" can be found through Article 359 of the Book of Adi Religion.

Conclusion pengertiaan of elements "Logic Sanggraha" according to Article 359 of the Book of Adi Religion and practice arising from customary justice are:

1. The existence of a loving relationship (dating) between a man and a woman who are both not tied to marriage.
2. Between men and women who are having sex occurred sexual relationship is based consensual.
3. The man had promised to marry her.
4. Sexual intercourse had done caused the woman becomes pregnant.
5. The man belies the promise to marry the woman without alasan21.

Understanding yuruidis of Article 284 of the Criminal Code concerning "adultery" is rather different from the customary offense "adultery" or "Logic Sanggraha", though its elements can be found in the Book of Adi Religion. According Oemar Seno Adji generally include sexual acts outside of marriage which resulted in the emergence of pregnancy, accompanied by a promise to marry, while those promises are not fulfilled or are not implemented. He does not justify the existence of "premarital" or "extra-marital intercourse", which raised the pregnancy as a result tersebut22 relationship.

5. Conclusion

From the description above, it can be concluded:

1. The legal basis for the implementation / enforcement of law in the society (which is the local wisdom), for the judge to examine, hear and decide criminal cases brought before it is started from the Constitution of 1945, Act Dararut 1 / 1951, Act No. 16 of 2004 (Act On AGO), and Act No. 48 of 2009 (the Law On Judicial Power), and the Declaration of the United Nations On the Rights of Indigenous Peoples (United Nations Declaration on the Rights Of Indigenous Peoples), which was passed on September 13, 2007.Thus the application of the law in the society as a local cultural / local wisdom in a criminal case a clear legal basis, and therefore does not conflict with the principle of legality.
2. Consideration of the judge in determining the elements of the offense in a criminal case based on law in the society is with reference to the Criminal Code. If that is unrivaled in the Criminal Code, the consideration is to live in a society of law, namely criminal customary law is still recognized its existence, and adapted to the existing sanctions in the Criminal Code. If the act is unrivaled in the Criminal Code, the sanctions are appropriate or similar to those set in the Criminal Code.

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