

ABSTRAK

Perbuatan zina dalam hukum positif pidana Indonesia diatur di dalam pasal 284 dan dalam KUHP Baru perzinahan diatur di dalam pasal 415 adanya perubahan isi pasal yang progresif dalam KUHP tetap tidak menyurutkan masyarakat adat Sapeken dalam menerapkan hukum adatnya, Hal tersebut selaras dengan Undang-undang Dasar 1945 pasal 18 B ayat (2) yang menyatakan bahwa “Negara mengakui dan menghormati kesatuan-kesatuan masyarakat hukum adat beserta hak-hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan prinsip negara Kesatuan Republik Indonesia, yang diatur dalam undang-undang”. Oleh karena itu, penelitian ini dilakukan untuk memaparkan bagaimana penerapan sanksi pidana adat terhadap pelaku zina di Kepulauan Sapeken, dan menganalisis bagaimana pengaturan sanksi pidana adat dalam penyelesaian kasus zina di Kepulauan Sapeken diberlakukan.

Metode penelitian yang digunakan dalam penelitian ini adalah yuridis empiris. Adapun pendekatan yang dilakukan adalah pendekatan analisis kualitatif deskriptif digabungkan dengan pendekatan *socio legal approach*. Teknik pengumpulan data berkaitan dengan pengumpulan data dilakukan melalui observasi (pengamatan), teknik komunikasi, dan studi dokumentasi.

Hasil penelitian ini menunjukkan, bahwa penerapan sanksi pidana adat terhadap pelaku zina di Kepulauan Sapeken masih dipertahankan berdasarkan korelasi hukum adatnya yang terpengaruh dari ajaran agama Islam. Sebagaimana teori *receptio in complexu* menjelaskan adanya hubungan antara pengaruh agama dengan hukum adat, seperti halnya yang terjadi di Kepulauan Sapeken yang mayoritas beragama Islam. Pengaturan sanksi adat pelaku zina di Kepulauan Sapeken sebelumnya telah diatur di dalam Qanun adat Sapeken yang kemudian bertahap telah diakomodasikan ke dalam Peraturan Desa Sapeken Nomor 03 Tahun 2015 tentang Tertib Susila.

Kata kunci: Hukum pidana adat - Hukum adat - Zina

ABSTRACT

The act of adultery in Indonesian positive criminal law is regulated in article 284 and in the New Criminal Code adultery is regulated in article 415, the progressive change in the contents of the article in the Criminal Code still does not discourage the Sapeken indigenous people from applying their customary law, this is in line with the 1945 Constitution article 18 B paragraph (2) which states that "The state recognizes and respects the unity of customary law communities along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary state of the Republic of Indonesia, which are regulated by law". Therefore, this research is conducted to explain how the application of customary criminal sanctions against adultery perpetrators in Sapeken Islands, and analyze how the regulation of customary criminal sanctions in the settlement of adultery cases in Sapeken Islands is enforced.

The research method used in this research is empirical juridical. The approach taken is a descriptive qualitative analysis approach combined with a socio legal approach. Data collection techniques related to data collection are carried out through observation (observation), communication techniques, and documentation studies. The results of this study indicate that the application of customary criminal sanctions against adultery perpetrators in the Sapeken Islands is still maintained based on the correlation of customary law which is influenced by the teachings of Islam. As the theory of *receptio in complexu* explains the relationship between religious influence and customary law, as is the case in the Sapeken Islands which are predominantly Muslim. The regulation of customary sanctions for adultery perpetrators in the Sapeken Islands has previously been regulated in the Sapeken customary Qanun which has gradually been accommodated into Sapeken Village Regulation Number 03 of 2015 concerning Susila Order.

Keywords: Customary criminal law - Customary law - Zina