Marapu Customary Law Reconstruction Through The Establishment Of Regional Regulations As An Attempt Of Human Rights Protection Againsts The Native Sumba Society

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Abstract

This paper discusses the issue of the customary law of the native Sumba (Marapu) society and the correlation to the protection against human rights (HAM/HakAsasiManusia). Marapunatives has the virtue of resolving civil disputes or suspected criminal acts, but on the other hand, Marapu's customary law is indicated to violate human rights, the two violated laws are: (1).Marapuis indicated to violate the right to life, freedom of slavery as stipulated in article 4 and article 20 of Law No. 39 of 1999 on Human Rights (Human Rights Law);(2).Marapuis indicated in violating article 338 of the Criminal Code. The formulation of problem of this writing is whether the attempt to protect human rights through the establishment of regional regulations harm the Marapu customary law? The reasearh method used in this writing is empirical normative, the author interviewed the Sumba Tribal Chief, a Priest and students in STT GKS. The conclusion is that Marapu's Customary Law should be reconstructed in the form of a Regional Regulation. Reconstruction is not a form of diminishing / abolishing Marapu / the Marapu customary law but it aims to provide legal certainty and human rights protection for the Sumba natives in accordance with Pancasila & the Constitution of the Republic of Indonesia.

Introduction

The 1945 Constitution of the Republic of Indonesia (UU 1945) expressly mandates in Article 18 paragraph (2) that “The State shall recognize and respect, to be regulated by law, the homogeneity of societies with customary law along with their traditional rights for as long as they remain in existence and in agreement with societal development and with the principle of the Republic of Indonesia (NKRI/Negara Kesatuan Republik Indonesia)”. Some provisions of national legislation that strengthen the enforcement of customary law in Indonesia at this time, they are: Decree of the People Deliberative Assembly (Ketetapan MPRS) Number II/MPRS/1960, in appendix A paragraph 402 stated, that “The principle of developing national law so that it is in accordance with the State’s direction and based on the customary law which does not hinder the development of a just and prosperous society.” It is also stated in the Law no. 5 of 1960 on Basic Agrarian Affairs/Agrarian Law (UUAP/PokokAgraria). Article 2 paragraph (4) of Agrarian Law regulates the delegation of authority to the customary law community (natives) to exercise the right of control over land, so that the natives may act as the implementing apparatus of the state’s right of control over land in its territory. Article 3 of the Agrarian Law stated that the implementation of the customary rights against the natives, must regulated in the way that they are in accordance with national and state interests, based on national unity and may not conflict with higher laws or regulations.

Recognition of the extistency of the customary law is also seen in Law no. 41 of 1999 on Forestry (UU Kehutanan), which emphasizes that the implementation of the rights of the natives, customary law and their members and the rights of individuals to obtain benefits from forests directly or indirectly are based on a regulation for the attainment of the objectives reffered to in this law. Thus in the judicial environment, Law No. 48 of 2009 on Judicial Power (Law on Judicial Power), article 5 paragraph (1) states that judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that lives within the society. Recognition of customary law as an inseparable part of the positive law in Indonesia, is not limited to the provisions of the legislation mentioned above. According to Widiyani (2019), The government recognizes, realizes, both philosophically and sociologically, the formation of the Republic of Indonesia as a rechtstaat, is inseparable from the customary law itself, even the government has established 538 customary law communities (natives) from 17 local (regional) laws in 13 districts/cities in 10 provinces. In this paper, Author conducted research on the Marapu customary law on the Sumba Island. Sumba Island is located at 10° South Latitude, 120° East Longitude. The size of the island is approximately 11,911 km². West Sumba is approximately 4200 km². East Sumba is approximately 7711 km². The majority of the Sumba population embraces Christianity and Catholicism, while a small population embraces Islam, Balinesse Hindu, and
Buddhism. However, there are still many Sumba natives who adhere to the Marapu customary law. From the accessible data, in 2005, the adherents of Marapu customary law in West Sumba Regency are 78,901 people (20.05%) out of the total population of 393,475 people. Soelarto said, other data stated that there area 135,000 adherents of the Marapu customary law, 45,000 Christians, 49,000 Catholics, 3,000 Muslims, and 63,000 Marapu customary law adherents in East Sumba, 37,008 Christians, 2,500 Catholics, and 4,423 Muslims. Sumba Island is an island located in East Nusa Tenggara Province (NTT/Nusa Tenggara Timur) consisting of 4 (four) districts, namely: 1. West Sumba Regency (Kabupaten Sumba Barat), 2. Southwest Sumba Regency (Kabupaten Sumba Barat Daya), 3. Central Sumba Regency (Kabupaten Sumba Tengah), 4. East Sumba Regency (Kabupaten Sumba Timur).

This paper analyzes the Marapu customary law among the Sumba natives which must be reconstructed through the formation of Regional Regulations in each Regency on Sumba Island. According to Soepomo (2000), customary law is non-statutary law which includes laws that are based on the judges’ decisions containing legal principles, customary law is based on the traditional culture. Customary law is so called a living law, because customary law manifests a real sense of law from the community (natives). The validity of a customary law is evident in the decisions of the legal officers, for example the decision of a group of villages, the decision of the Tribal (Adat) Chief, the decision of the village peace judge, the decision of a religious official. What is intended by a decision or stipulation is an act or rejection of an act by a legal officer with the aim of enforcing the law. The Sumba natives is count as one of the social being and customary law adherents in Indonesia. According to SoerjonoSoekanto (2003), the characteristics of a social being (zoont politicon)living in the society are: firstly, humans who live together and get along for a long time; secondly, humans that are entitled to one another; thirdly, they live in a system of shared life that produces culture. The purpose of the reconstruction is because the Author observes that Marapu’s customary law has both good and bad values that is indicated to violate human rights. Therefore this reconstruction is not to diminish or negate the Marapu customary law but to protect the human rights of the Sumba natives, provide legal certainty, equality before the law and a sense of justice among the Sumba community.

Advantages/good values or the positive side of Marapu customary law is that it is a highly respected, obeyed, and even more likely to be obeyed compared to the positive law in Indonesia. Marapu customary law is upheld in all four districts on Sumba Island (West Sumba Regency, Southwest Sumba Regency, Central Sumba Regency, East Sumba Regency). The Sumba natives believe in forces that exist outside of the human world that still influence and even determine their lives. That power is the strength of their ancestors. According to Kleden (2017), therefore the Marapucustomary law is a form of worshipping the ancestors. The belief in the existence of supernatural forces is a manifestation of the needs of humans who seek safeguard, protection, and peace. Authorwill emphasize once again that Marapu is a customary law (living law) of the Sumba natives and is used in every customary act/ritual (marriage, funeral) and also used to resolve legal dispute. The legal issues raised to the Author by Rev. FransinaRanggalodu, M.Th (Pdt.FransinaRanggalodu, M.Th)that occurred are, firstly, the problem of debt subjection caused by gambling, the high cost of customary (traditional) marriage processes, Sumba funeral procession; secondly, domestic (family) violence; thirdly, human trafficking in person.

According to Nggodu (2006), strengths/goodness or other positive aspects of the Marapu customary law are that it contains 10 (ten) spiritual cultural values, that are: 1. Contains the expressions of personal belief in God Almighty; 2. panggapananjarungu – lakupaladangu ’which means we need to be careful in taking steps’; 3. Marapu as a ‘sacred knowledge’ which gives testimony; 4. Elements of Marapu needs to “live within”; 5. Marapu contains “conscience” in the term of a condition and personal awareness that brings humans’ values closer to the values of God; 6. Marapu contains self-awareness; 7. Marapu contains determination, intention; 8. Marapu contains mindfulness of virtue; 9. Marapu contains pleasant character; 10. Marapu contains a pure (clean) soul.

However, on the other hand, Marapu customary law also has weaknesses/ shortcomings or negative sides that are indicative of violating human rights and being contrary to the positive law in Indonesia, there are: Firstly, according to some STT GKJY students who were also the members of UPH Law School community service program (PKM/PengabdianKepada Masyarakat FH UPH) Marapu ‘seemed’ to provide coercion for women especially in terms of Marapu’s traditional marriage that if the woman does not want to marry a male candidate because it’s an arranged marriage or because she don’t love him, but in the name of culture the marriage will still be carried out and sometimes there are women who are still undergone (the age of a juvenile/child) will also be forced to perform marriage. The legal basis (legal reasoning) stated that the ideal age/permitted age for marriage is if the bride and groom have reached 19 years old as stipulated in Article 7 paragraph (1) of Law no. 16 of 2019 regarding the Amendments to Law no. 1 of 1974 regarding Marriage (hereinafter referred to as Marriage Law).

The second drawback of Marapu customary law, is that Marapu customary law is indicated to violate the provisions in Law no. 39 of 1999 regarding Human Rights (hereinafter referred to as Human Rights Law) in particular, Article 4 regarding the right to life and Article 20 regarding the freedom of slavery. Based on the interview done by the Author to the Tribal (Adat) Chief of Sumba called UmbuRaing, the Chief stated that in
the death of a king/nobleman in Sumba, the servants/maids who were very close to the specific king/nobleman then must also follow their master to death in various ways which have been settled through customary deliberation. Besides the Human Rights Law, that act/deed is also indicated in violating Article 338 of the Indonesia Criminal Code (KUHP/Kitub Undang-undang Hakatan Pidana) regarding murder that stipulates a penalty of imprisonment of maximum fifteen years. According to GidionMbilijoraquode by Japalatu (2015), (Regent of East Sumba in the 2010-2015 period – and now in the 2016-2021 period), in the social – economic life of the people of Sumba, especially in East Sumba, nearly all matters relating to customs (culture) are desperately defended.

Author uses the term reconstruction with the intention to make the Marapu customary law as a written positive law and adapt it into human rights values as stipulated in the 1945 Constitution. The term is different from conversion, which only changes a form to another form without making any adjustments. Based on the background written above, Author raised a formulation of problem namely: Is the effort to reconstruct the Marapu customary law as an effort to protect human rights through the establishment of a Regional Regulation damage the Marapu customary law?

METHOD
According Budianto (2020), the method used by Author is the sociological legal research method, and Waluyo (2002), sociological legal research is a research to examine the applicable legal provisions and the reality that happens within a community. The data collected are primary data in the form of systematic interviews with the Sumba Tribal (Adat) Chief, named His Excellency UmbuRaing (Yang MuliaUmbuRaing) on 27th of August 2019 and primary data as a result of student counseling, vicar, lecturer and Priests in STT GKS Lewa during the UPH Law School community service program (PKM/PengabdianKepada Masyarakat FH UPH) on the 28th of August 2019. In addiction to the primary data, Author collected secondary data, namely primary legal material in the form of positive laws and regulations in Indonesia, secondary legal material consisting of scientific articles, journal, and tertiary legal materials consisting of Bahasa Indonesia Dictionary (KBBI/KamusBesar Bahasa Indonesia), Black’s Law Dictionary. The data is processed and analyzed qualitatively, namely formulating the truth based on the opinions of legal experts, doctrines, control theories or from the formulation of legal norms so that a comprehensive conclusion can be drawn to describe the truth of the law as it is.

RESULT AND DISCUSSION
Potential Human Rights Violations due to the Marapu Customary Law
The 1945 Constitution of the Republic of Indonesia (UUD 1945) expressly mandates in Article 18B paragraph (2) that “The State shall recognize and respect, to be regulated by law, the homogeneity of societies with customary law along with their traditional rights for as long as they remain in existence and in agreement with societal development and with the principle of the Republic of Indonesia.” According to the Author’s opinion, the noble mandate can be manifested by reconstructing the customary law of a customary (adat) community, especially the Marapu customary law in the form of positive law, Regional Regulation, and as a form of present of the State for customary law, adherent of a local community (local wisdom).

Marapu customary law is a libing law for the people of Sumba. In accordance with Law No. 5 of 1969, the State recognized five religions, namely Islam, Catholicism, Protestantism (Christians), Hinduism, and Buddhism. Whereas what it meant by the term ‘belief’ was originally a name given to mysticism in Java, to distinguish it from the five official religions. There are several meanings of the word ‘Marapu’, YendriYettiLayloh (2007), adapted the opinion of L. Onvleethat Marapu consists of two words namely:ma dan rapu, namem means ‘the/the one’andrapu means ‘respected’, ‘worshipped’, and the opinion ofA.A.Yewangoe, stated that, the wordMarapu consists omlam dan rapama, the wordnamameans ‘the/the one’and the wordrapummeans ‘hidden’, ‘the one that cannot be seen’. Other literature, desckibedMarapuwith:1) The inhabitants of the heaven who live eternally. Those noble creatures are beings that have the form and personality of a human being. They consist of male and female types. They also pair up as husband and wife. Some of their descendents inhabit the earth and become the fathers of the ancestors of all the tribes that live in Sumba; 2) The spirits of the ancestors of Marapu (ParaiMarapu); 3. Spirits of the relatives; and 4) Spirits inhabiting nature. They who have magical powers that affect human life in the universe.

The advantages/good values or positive side of the Marapu customary law for the Sumba people is that it lives as a philosophy of life for various Sumba cultural expressions. Starting from traditional ceremonies, houses of worships (umaratatu), traditional houses and building design procedures, to all aspects of life and activities of the Sumba people. Marapu a fundamental value system that is held and adhered to by the Sumba people. According Djawa (2014), like the traditional legal system of Marapu, Marapu generally has two important roles in the life of the Sumba people. First, Marapu serves as a way of life and behaviour of the Sumba people. Marapu itself has rules or laws. According to UmbuRaing, Marapu is a guide from God Almighty in solving a problem and as a form of respect for ancestral spirits. If a nobleman/king dies, the servant who is most loyal/close to the king/nobleman must also die on the same day as agreed upon the customary (adat)
deliberation. In our opinion, these customary actions can be categorized as alleged criminal acts and violation to the human rights. Law no. 39 of 1999 concerning Human Rights is the legal protection on human rights in Indonesia.

The 1945 Constitution has also explicitly mandated the protection of human rights as in Chapter 10A, article 28A to Article 28I and has been embodied in the Human Rights Law. According to the Author’s opinion, the customary (adat) act (in the form of sacrificing the lives of people who work as slaves in order to fulfil the customary law) stated above are actions that violate Article 4 of the Human Rights Law, namely ‘the right to life, the right not to be tortured, the right to personal freedom, mind and conscience, the right to religion, freedom of slavery, the right to be recognized as a person and equality before the law, and the right not to be prosecuted on the basis of a retroactive law are the human rights that cannot be reduced under any circumstances and by anyone.’ Referring to the Elucidation of Article 4, what is meant by ‘under any circumstances’ includes the conditions of war, weapon disputes, and or emergencies, what is meant by ‘anyone’ is the State, Government and or members of the public, the right not to be prosecuted on the basis of a retroactive law can be excluded in the case of severe violations against human rights classified as crimes against humanity.

Some of the Indonesian citizens who belongs to the minority group apparently hasn’t got any serious attention from the government. The issue of minority groups often triggers controversy to various parties, thus hampering the human rights enforcement efforts. Indonesian society in general is still unfamiliar in seeing the Indonesian citizens who belongs to the minority group apparently hasn’t got any serious attention from the government. According to Juniarti (2018), that understanding must be addressed because the constitution mandates all human beings to have the same degree/status so that there should not be discrimination for any reason.

Therefore, the weakness/deficiencies or the negative side of Marapu customary law which believes in the concept of ‘servants’ or slaves as a form of respect to the ancestors and Marapu customary law, the concept of slavery (slaves) in Marapu needs to be reconstructed with a positive law (Regional Regulation), perceptions of the legal community customs that they can treat slaves as they wish even to violate the law that is a violation towards human rights. Although in the social structure of customary law communities, slaves are considered in the lowest class, but slaves have the right to life, the right not to be tortured, and other rights protected by the law and constitution of the of the Republic of Indonesia because the Author believes, humans that are born (entitled) to a traditional structure/culture wouldn’t dare to file a complaint/report to the police if they are beaten, tortured, or become victims because they ‘must’ obey their master in concept and if they fight back then their offspring will receive bad karma.

In addition to the alleged human rights violation, these customary acts can also be categorized as alleged criminal acts of murder as regulated in Article 338 of the Indonesia Criminal Code (KUHP/Kitab Undang-Undang Hukum Pidana) which stated that ‘The person with deliberate intent take the life of another person, shall, being guilty of manslaughter, be punished by a maximum imprisonment of fifteen years’, and those who carry out customary actions can be liable for criminal liabilities.

The second weakness / deficiencies or negative side of the other Marapu customary law which have potential problems of human rights violations is regarding marriage, the Sumba people/native is a patriarchal society that men are considered as a dominant figure in the family system and the female is considered as submissive beings among the Sumbanese culture. According to Brennan (2018), the good woman construct reflects idealized patriarchal gender expectations that hold women to be passive, nurturing, self-sacrificing, weak, vulnerable. (Traditional) Marriage procession in the Sumba culture can be considered expensive, in order to be able to carry out a marriage, the bride and groom must first meet the customary (adat) requirements, one of which is giving up the dowry called belis(Tau Na Weli).Belis and the acknowledgement is the most important elements in the marriage of the Sumba people. Belis is the goods submitted by the party that takes the wife (male) to the party that gives the wife (female) in the form of animals (mainly horses and buffalo), mamuli/made of gold, silver, and copper, chains made of gold, silver, and copper because these items are considered masculine. Acknowledgement items are given by the wife (female) to the to the female (male) taker in form of blankets, gloves, ivory bracelets in return for the belis because they are considered feminine. Marriage without belis and it’s acknowledgement is considered an illegitimate marriage. According Wellem (2001), The size (price) of the Belis depends on one’s position and the size of the clan members within the community.

According Wara and Purwiyastuti, The mating system among the Sumba people is exogamy. The clan or tribe who will marry the bride is called wera, and the clan who will accept the bride is called olesawa. The taker (recipient) always feel inferior to the giver. The bloodline is always calculated patrilineally (father’s lineage), after marriage a woman must transfer to the husband’s clan/tribe. In this type of relationship, the Belis system is originally called yaranganga (giving value or price). In the 1950s, there was a shift in the value of belis. Belis value is currently enormous, from the previous 10-20 animals to 40-60 animals for normal people. It is no longer a symbol between clans or tribes, what actually happens is the commercialization of the value of belis and it seems like ‘selling’ or exchanging a daughter with the number of animals as belis. As a result, there is a potential conflict between the family who is given the belis and the family who gives the belis; economic
deterioration; and the relationship in the household. The other impact is that, girls who are still underaged are ‘forced’ to perform marriage even without love with men who are generally much older. According to Forth as quoted by Fredrick, the purpose of belis is firstly, to provide guarantee and certainty to the position of the wife and children in the husband’s clan. If a woman is not ‘traded’ (being given the belis) then she and her children remain in her home clan. The acknowledgement is a symbol of the engagement between the two clans involved in the marriage certificate: secondly, the belis aims to replace the empty place of a woman in the giver’s clan because the woman is transferred to the husband’s clan. Belis serves to maintain harmony within the clan.

Forced child marriages is an act that is indicated to violate several laws and regulations as well as human rights, although in Marapu customary law, it is permitted. In the Author’s opinion, based on Article 7 paragraph (1) of the Marriage Law, “married is only permitted if men and women have reached the age of 19 (nineteen) years” and based on Article 7 paragraph (2) of the Marriage Law that “in case of deviations from the provisioned age as referred to paragraph (1), parents of men and/or parents of women may request for dispensation from the Court with very urgent reasons accompanied by sufficient supporting evidence”. In addition to Marriage Law, child (juvenile/underaged) forced marriages have also taken the child’s right to go to school and are in conflict with Law no. 23 of 2002 regarding Child Protection, as amended twice, last with the Law no. 17 of 2016 regarding Child Protection (UU Perlindungan Anak) namely in Article 9 paragraph (1) that stated “every child has the right to receive education and teaching in the context of their personal development and their level of intelligence according to their interests and talents”. In addition, forced child marriage will damage the mental, psychological, and physical condition of the child, the child will be easily depressed, but on behalf of Marapu, the child must be willing to be married even she herself refuses. Author hope that parents in Sumba would change their mindset that children, especially girls have the basic right to education as mandated in Article 48 of the Law on Human Rights and poverty is not a reason for sending children to marriage because the Government through the Ministry of Education and Culture guarantees free education, 12 years of compulsory education. The right to education is the right of children, both boys and girls, so that boys should not be told to work hard, and even told to quit school only to work as farmers, ranchers.

According Purnamasari (2016), before getting married, the provisions as regulated in the Marriage Law are very useful to be a guide for prospective brides. The prospective bride and groom must really know the background of each family — especially those related to blood relations, so that clarity can really be obtained, on who’s the parents or grandparents of each candidate, or who are the siblings (brothers/sisters) from each candidate, or who is the nephew of each candidate, or who is the uncle/aunt of each candidate. The nature of marriage is not just a formal bond but also an inner bond. This mental bond should be maintained throughout the marriage so that the marriage has an important value, because without a spiritual bond then the value of marriage is meaningless.

The existence of the Marapu Customary Law among the Sumbanese Community System

Tracing back to its history, the Sumba people are still in the same family as the first group of people from Indo-China region, who have long settled in the Malay Peninsula and formed a new race; Melayu Muda, which gradually formed the Megalithic culture, their hallmark is the buildings made of large stones in the form dolmen-patterned tomb. More and more immigrants entered the island of Sumba, but it did not shift the position of the Rato (the nobles – natives) among the Sumba people. The nobles that are classified as the one who holds power is even more emphasized by the presence of the king’s figure as the head of the region, the commander in chief and the judge. And a king is always appointed from a noble class.

The appearance of Christianity is a part of the Zending message of Gospel by the Dutch in 1881. The process of Christianity is inseparable from the Paitism movement in the 18-19th century by transforming the European ‘culture’ to the people of Sumba. Zending always adheres to the principles of Calvinist theology, namely the government and zending are two separate institutions but equally carry out the commands of God signed to them. The government is obliged to maintain public order and must protect good people and punish bad people, and the government must also support the activities of the zending in the Gospel Preaching Area. The zending (as the delegated pastor) for example protested the policy of the Dutch East Indies government which held tax collection on Sundays and the government’s actions to dumb Raja Umbu Wait and Haumara to Padang, West Sumatra. So the relationship between the King, the Rato, and the Priest is very harmonious among the Sumba people.

The strength or goodness of the Marapu customary law for the people of Sumba is that all the people of Sumba obeyed the law. The Sumba people highly respects their traditional system. Solfina Lija, explained that the people of Sumba highly respected every decision conveyed by the Tribal (adat) Chief and Priests, rather than the opinions or decisions of law enforcers. Pastor, Prospective Pastor (Vicar) has an important role to solve legal problems that occur among the congregation in the Sumba Christian Church (GKS/Gereja Kristen Sumba) they serve in. A pastor and vicar besides teaching scriptures, church services, also carries out the principle of know your student while on campus, and know your community while being in their congregation, it has become an inseparable part of their duties for the purpose of minimizing the existence of criminal acts, or as a prevention
measures so that students of STT GKS or church members on Sumba Island will not become victims of human trafficking.

Legal issues and potential human rights violation among the Sumba people can be resolved by Marapu or state law, positive law. For example, according to UmbuRaing, the Tribal (Adat) Chief of the Sumba people, ‘Marapu’ is a way to solve problems by means of consensus and democracy to discuss and agree on a matter. In ‘Marapu’, criminal law can be ruled out if there is peace, for example a person is caught for stealing a pig, the thief can be forgiven by residents, or the family, if he has paid the customary fines requested by the family who lost the pig.

According to UmbuRaing, Marapuis the unwritten law of the Sumba people that must be obeyed, of it is not obeyed then the person who violates will get ill and will get condemned by the universe. For example, Marapu prohibits people from cheating either in their house or in any places, if it’s violated, then those who cheat will get sanctions from nature such as being bitten by a snake, struck by lightning, or suffer from severe illness. Another example is that some traditional houses in Sumba should not be entered by arbitrary people, but if the person violates and continues to enter the house then it must be resolved by customary means, resolved by Marapu ritual by providing some items needed for the ritual procession. Marapu aims to free themselves from the bad deeds of entering a prohibited traditional house. A legal problem that often occurs is the problem of debt bondage caused by the expensive procession of a traditional ceremony or caused by gambling problems. According to one of the Vicar in STT GKS Sumba, Vicar Hendry, the burial cost of the Sumba people is enormous especially if those who die are those who have throne, or a royal descendant. Burial processions of Sumba people require a long time and a large cost, oftenly some Sumba people are willing to borrow money, make debt for the burial procession. The length of the burial procession also has a negative effect, oftenly, those who wait and attend the procession will gamble.

According to the Author, the customary actions and decisions above are to carry out restorative justice and uphold deliberation in resolving a dispute/legal problem. The case above, is actually a criminal offense and must be resolved by law, the cattle theft cases above can be threatened with Article 363 paragraph (1) number (1) of the Indonesia Criminal Code that stated: “threatened with imprisonment for a maximum of 7 (seven) years; 1. Theft of cattle.” Meanwhile the act of entering a traditional house without permission can be threatened with Article 167 paragraph (1) of the Indonesia Criminal Code that stated “whoever forces entry into a house, room, or closed house which is used by others against the law or being there against the law, and at the request of entitled to and not to leave immediately, is threatened with a maximum of nine months imprisonment or a maximum fine of four thousand five hundred rupiah”. The amount of fine has been adjusted based on the Supreme Court of The Republic of Indonesia Regulation No. 02 of 2012 concerning Adjustment of Limits of Minor Crimes and the Number of Fines in the Criminal Code that is doubled to 1,000 (one thousand) times.

According to Soepomo, debt payments for the cost of corpses must take precedence, if its billed by the person who lent the money. Before the inheritance is divided, the cost of the corpse must be paid in advance. If there is a violation of customary (adat) law, then the legal officer (Tribal Chief) must take concrete actions (adatreactie) to correct the violated law, for example: compensating the affected person or paying customary (adat) money to the victim / village alliance. According to Soepomo, the enactment of a customary law is evident in the decisions of the legal officers, for example the decisions of a group of villages, the decision of the Tribal (Adat) Chief on Sumba Island, the decision of the village peace judge, the decision of a religious official. The verdict or stipulation reffered to is the act or rejections of an action from the legal officer with the aim of enforcing the law.

According to Ter Haar as quoted by Soepomo, the thickness or thinness of the material strength of a customary law regulation is dependent on the following factors: a. more or less frequent (frequentie) similar stipulations, which gives stability to the realization of the legal regulations; b. how far the social situation in the society concerned has changed; c. how far the realized regulations are in line with the prevailing customary law system; d. how far the rules are in line with humanitarian requirements. Customary law does not distinguish between acts that are in violation of civil law and violation of criminal law. In the customary court, if there is someone who commits a customary violation in the field of civil law or criminal law, then that person is examined, considered and decided at once in an inseperable trial.

According to HilmanHadikusuma (2003), after a case is examined in the State Court using customary law, the judge will then produce the following decisions: a. ‘equating verdict’; b. ‘adjusting verdict’ in accordance with the customary (traditional) legal norms; c. ‘deviation or overriding verdict to the customary law that applies’; d. ‘middle ground verdict’ which contains the middle ground content between parties’ unclear statements; e. ‘verdict of change’ to change the old customary law with the new customary law; f. ‘new verdict’, decisions that contain new legal norms; g. ‘Refusal verdict’, refuses the content of the claim or lawsuit by the parties to the case because it is misplaced. Settlement of customary (adat) issues needs to consider the results of the deliberation that in the deliberation of the ancestors which according to the history lasted for six times were still very much integrated with the original beliefs, namely the Marapu customary law, so that all devisions are
sacred and the community are so afraid to violate them, because they will be punished by Ndamalundungung (will not survive, will die soon).

**Reconstructing the Establishment of Regional Regulation as an Effort to Protect the Sumbanese's Human Rights**

Marapu traditional law is a law written in the life of a Sumba community (living law), but based on the Author’s research, Marapu customary law has teachings that are contrary to positive law and the Constitution. The effort of reconstructing the Marapu customary law is not an attempt to injure feelings, traditional legal order of the Sumba people but as a form to rearrange Marapu customary legal actions that are indicated to violate human rights. Legal reasoning for the reconstruction of the Marapucustomar law is aimed at making it a written law, providing legal certainty, legal protection, justice, and order for the people of Sumba because in essence, the human’s right to life, freedom of slavery is mandated by the 1945 Constitution.

As a safeguard of the law against the people of Sumba on potential human rights violations due to the Marapu customary law mentioned above, which in one side, the Indonesian government acknowledges the existence of Marapu customary law as part of a living Indonesian culture (living law) and should be preserved and protected. To maintain and preserve the culture, and to avoid contact with the positive law of Indonesia, it needs to be reconstructed into a positive law as well. According to the Author, the positive law in Indonesia is in the form of a written law produced by an authorized institution (legislative institution), has norms/principles that is binding, and has sanctions for violating the law.

The positive law in Indonesia is still influenced by customary law as an unwritten law/customary law community, but the positive law in Indonesia is also written in the form in accordance with the provisions of the formation of legislation even though there are still the positive laws that are inherited from the Dutch law. As described above, there are cultural heritage from the Sumba natives, namely the Marapu customary law, which tends to violate human rights and positive law, including:

1. **Human Trafficking (TPPO/ Tindak Pidana Perdagangan Orang).** Due to poverty as a result of the Marapu customary law, many Sumbanese wants to work abroad. There is a strong urge to escape from the limited economic conditions or because of lack of knowledge, without supplementing legal documents, many Sumbanese turn into victims of human trafficking abroad. According to the Author, in addition to the economic factors, human trafficking is also caused by the ignorance of law of the people of Sumba on the legality of working abroad. Human trafficking is also one of the element that causes women to become the victims of exploitation / prostitution both online and conventional. According to Rizky and Debora (2018) that the Law on Human Trafficking is also a regulatory tool that can be used only to punish pimps and pimps who were against the law and immoral because they use others to get money by exploiting men / women, pimps do not think about psychological impacts, health effects on the sexual workers or the ones who hired those sexual workers. This is the factor of the Marapu customary law that contradicts with Law no. 21 of 2007 regarding the Eradiction of Trafficking in Persons. As explained above, that Marapu customary law obliged the Sumba people to pay a very huge amount in order to carry out a customary event (marriage or funeral), the complicated expenditure will then motivate Sumba people look for shortcuts and faster ways to get money.

2. **Domestic (family) violence as a result of paradigm shift in belis**, contradicts with Law no.16 of 2019 regarding Marriage (Marriage Law) jo. Government Regulation no. 9 of 1975 regarding th Implementation of Law no. 1 of 1974 regarding Marriage and the Criminal Code jo. Law no. 23 of 2004 concerning the Elimination of Domestic Violence. The philosophical meaning of giving belis from the family of the groom to the family of the bride is as an honest form of marriage, marriage by granting honesty money (goods) is commonly practiced among indegenious and tribal people who maintain father’s lineage (male). After marriage, then the wife is under the authority of the husband’s relatives. Currently the shift in the meaning of belis occurs as a sign of self-esteem and can be considered a form of heroism or prestige issued so that when a woman has been given a belis, the husband can be justified in treating his wife arbitrarily.

3. The condition of the Marapu customary law, which always interpreted by slaughtering livestock in every Sumbanese daily life activity, case the crime rate of theft of cattle to increase moreover there is a culture of animal debts among the community itself, which contradicts with the Civil Code. It is resolved amicably or by filing a lawsuit to the competent District Court.

4. **Gambling also becomes an inseparable part of the Marapu customary law, which contradicts with the Indonesia Criminal Code jo Law no. 7 of 1974 jis Governmental Regulation no. 9 of 1981 regarding the Implementation of Law no. 7 of 1974 regarding Control of Gambling.**

However, on the other hand, Marapu customary law is also believed to resolve legal conflicts within the people of Sumba. UmbuRaingas the Tribal (Adat) Chief/Raja Lewa, Sumba, stated that the Marapu customary law is to solve problems with familial deliberations, for example someone is caught and proven to steal livestock, in fact the offender can be turned over to the police to be processed but through a familial deliberations, then the offender can be forgiven and not be reported to the police, if the perpetrator can pay compensation for theft, and the form of the compensation depends on an agreement with the family whose cattle
have been stolen, some are in the form of money, some are in the form of a cattle as well. In the opinion of the Author, carrying out Marapu’s customary law is a form of an agreed legal agreement (consensualism) between the Sumba natives in a sustainable manner on norms, rules, prohibitions, and traditional sanctions for violators both for the Sumba natives or people outside of Sumba natives that are considered to violate the Marapu customary law.

In this research, we could identify the forms of harmonization between customary law and positive law in Indonesia, there are: firstly, in the 1945 Constitution of the Republic of Indonesia Article 18B paragraph (2) mandates that “The State shall recognize and respect, to be regulated by law, the homogeneity of societies with customary law along with their traditional rights for as long as they remain in existence and in agreement with societal development and with the principle of the Republic of Indonesia (NKRI/Negara Kesatuan Republik Indonesia)”, which is regulated in Law and article 18B The State shall recognize and respect, to be regulated by law, the homogeneity of societies with customary law along with their traditional rights for as long as they remain in existence and in agreement with societal development and with the principle of the Republic of Indonesia, regulated in Law and Article 18B paragraph (3) of the 1945 Constitution that stated “The cultural identity and traditional community rights are respected in line with the times and civilizations”; secondly, the judge examining, adjudicating, and deciding a case (criminal case, civil case) must analyze, follow, and understand the legal values and sense of justice that lives in the community as mandated in Article 5 paragraph (1) of the Judicial Power Act; thirdly, the existence of the Marapu customary law and the existence of other beliefs has gained legal recognition and protection for citizenry administrative needs after the Constitutional Court Decree No. 97/PUU – XIV/2016.

The mandate of the constitution is strengthened, reaffirmed, and manifested in the provisions of Article 6 paragraph 1 and paragraph 2 of the Human Rights Law which stated that: (1) For the sake of enforcing the Human Rights Law, differences and needs in the legal community must be considered and protected by the law, society, and government. (2) Cultural identity of the customary (adat) tribes, including the rights to customary land is protected, in line with the times. As for the Elucidation of Article 6 paragraph (1) of the Human Rights Law, it is clear that customary rights that are still valid and upheld in the customary (adat) tribes must be respected and protected in the context of the protection and enforcement of human rights among the customary (adat) tribes concerned with due regard to laws and regulation. While the Elucidation of Article 6 paragraph (2) of the Human Rights Law explains that in the context of upholding human rights, the national cultural identity of the customary (adat) tribes, customary rights that are still clearly upheld by local customary law communities, remain respected and protected as long as they do not conflict with the principles of a state which emphasizes justice and the welfare of the people.

According to Bushar Muhammad (1975), it is not possible for a particular law, a law that is foreign to the community to be forced to be applied in a customary (adat) community, if certain laws/foreign laws are against the will of the people or do not fulfill a sense of justice and are contrary to the culture of the tribe/community in concern. In the opinion of the Author, if Marapu customary law/other regional customary law is established in writing according to positive law in Indonesia, this will further strengthen the local customary law system especially because the content of the law is a local content/local wisdom and is in accordance with values that lives within these customary tribe.

According to the Author’s opinion, and the Author will emphasize once again that Marapu is the customary law (adat law) of the Sumba people. Marapu has legal sanctions for those who are proven to violate Marapu. Sanctions in the form of reciprocation from the universe of any form. One of the sanctions from the universe according to Umbu Raing is the emergence of wild animals that are ready to injure of eat the ‘alleged’ perpetrators of Marapu customary law violators.

However, according to the Budianto, it is time for Marapu to be reconstructed in the form of positive law in the form of Regional Regulations to resolve customary law issues in Sumba. Regional Regulations are the solution and Marapu is allegedly charged with violating human rights as the Author described above. Regulations drawn up are regency/city regional regulations (PerDa/Peraturan Daerah). This regulations must be compiled in accordance with the rules and regulations of the law as stipulated in Law no. 15 of 2019 regarding Amendment to Law no. 12 of 2011 concerning the Formation of Legislation/PPU Law (UU PPU/Pembuatan Peraturan Perundungan undangan). As explained above that in Sumba Island there are 4 (four) districts so that each regent should plan, compile the draft of the regional law.

The formation/compilation of the draft regulation must be carried out and based on the principles of establishing adequate laws and regulations as regulated in Article 5 of the PPU Law, namely: a. a clear purpose; b. the suitable institutional or assembly; c. match between the type, hierarchy, and material content; d. can be implemented; e. usability and efficacy; f. a clear formulation; and g. accountability. Regulations or technical procedures for establishing regional regulations or regional legal products are regulated in Minister of Home Affairs Regulation (Peraturan Menteri Dalam Negeri) no. 120 of 2019 (Permendagri of the establishment of PHD
According to Soehino (1997), the material content that can be regulated in local regulations are: a. materials or things that put a burden on the population; b. material or matters that reduce the freedom of the population, for example by holding restrictions and obligations which are usually accompanied by threats or criminal sanctions; c. material or things that limit the rights of the population, for example a commensurate line; d. material or things that have been determined in the same level of legislation or regulations above. The main goal of the establishment of a Regional Regulation is to empower the community and realizing regional independence, and the formation of regional regulations must be based on the principle of forming legislation in general, which are: prioritize the interests of the people, upholding human rights, environmentally and culturally oriented, quoted by Abdullah (2005). The making and reconstructing of the reional regulations on a customary law is a concrete manifestation of the legal politics of a regional head and his apparatus. According to Bintan R. Saragih, (2006), revealing that the politics of law as a policy taken by institutions/officials who are authorized to change, replace or maintain existing laws, so that the legal system is close to reality. According to the Author, the Regional Head of Sumba already has the same opinion on politics that a way is needed to simplify the customs of the Sunbanese, the Marapu customary law. The simplification of customs (adat) does not mean to eliminate the custom, but to avoid things that can trigger other potential legal problems. The people of Sumba who adhere to the teachings (beliefs) of Marapu must be protected and as and extension of the concept of sovereign regional autonomy in Indonesia. According to Yahya Ahmad Zein (2015), in the effort to fulfill the rights of the customary (adat) community, it is the obligation of all parties, especially local governments to protect and guarantee the rights of the customary (adat) community, the role of regional governments in the recognition and fulfillment of the rights of the customary (adat) community is an explanation of the concept of regional autonomy in Indonesia concerning the Governmental Area.

This regulation drafting is also one form of providing legal certainty, uniforming the law (unification) and to protect the human rights of the people of Sumba. According to the Author, the regulation drafting is required to fulfill philosophical, sociological, and juridical values and this positive law has been needed by the people of Sumba. The content of the Regional Regulation must be prepared carefully, paying attention to the philosophical, sociological, and juridical elements, bearing in mind that in a local regulation there are criminal provisions, provisions to seize people’s freedom and punish them in criminal form. Based on Article 15 paragraph (2) of the PPU Law, the criminal provisions in the form of imprisonment for a maximum of 6 (six) months or a maximum fine of Rp 50,000,000.00 (fifty million rupiah). In addition to imprisonment sanctions or fines, based on Article 5 paragraph (5) of the Minister of Home Affairs Establishment of PHD, local regulations may contain administrative sanctions in the form of: a. verbal warning; b. written warning; c. temporary suspension of activities; d. permanent cessation of activities; e. temporary revocation of permits; f. revocation of permanent licenses; g. administrative fines; and/or h. other administrative sanctions in accordance with statutory provisions.

The drafting of the regional regulation for the Sumba community must meet its philosophical, sociological, and juridical foundations. Firstly, the philosophical foundation is a consideration or reason that illustrates that the regulations that are formed considered the matter of worldview, awareness, and legal ideals which include the spiritual and the philosophy of the Indonesian people which originate from Pancasila and the Preamble to the 1945 Constitution; secondly, the sociological basis is a consideration or reason that illustrates that regulations are formed to meet the needs of the community in various aspects. The real sociological foundation concerns empirical facts regarding the development of problems and the needs of society and the state; thirdly, a legal basis is a consideration or reason that illustrates that regulations are formed to overcome legal problems or fill legal vacuum by considering existing rules, the rulesthat needs to changed, or which will be revoked to ensure legal certainty and a sense of community justice. Juridical basis involves legal issues related to the substance or material that is regulated so that the new legislatoin needs to be formed. Some legal issues are, among others, regulations that are outdated, regulations that are unharmonious or overlapping, types of regulations that are lower than the Law so that the force is weak, the rules already exist but are inadequate, or the Indonesia Minister of Home Affairs Regulations No. 120 tahun 2018, Appendix IIdo not yet exist. The reconstruction of Marapu customary law into a draft of regulation is a tangible manifestation of the provision of legal protection through positive law. According to Yusriando (2018),that the protection of the law pursued through a legislation has underlying legal principles. Likewise, the protection of the law pursued through the effort of making and inclusion of its steps through legislation has a purpose, scope, planned through strategy and policy. The reconstruction of the Marapu customary law is as a way to preserve local wisdom, the noble values of marriage or death processions, because it is commonly seen in the procession of death there are ‘some parties’ who uses the long time of death procession to gamble and to provide legal certainty and preserving the dignity of the belis that the belis is not a place to show off the wealth of a family that might be obtained by borrowing, like an Indonesian proverb saying ‘dig a hole to cover the other hole’ (gali lubang tutup lubang) but the belis is a sacred and dignified exchange to uphold harmony between male and female families.
CONCLUSION
Based on the discussion above, it can be concluded that the Marapu customary law (living law) with positive law in Indonesia, both criminal law and civil law have an interrelated relationship. Marapu does not conflict with positive law in Indonesia and positive law in Indonesia does not conflict with Marapu. Criminal acts that occur in Sumba are resolved with positive law in Indonesia whereas if there are customary (adat) law issues, then they are resolved through familial deliberations and with Marapu rituals. Establishment of local regulations is the solution in reconstructing Marapu customary law which are allegedly violating human rights, violating the rights of women and children. The urgency of establishing a Regional Regulation on Marapu is not to damage Marapu customary law, but to harmonize Marapu customary law with the positive law in Indonesia and provide written legal certainty for the Tribal (adat) Chief of Sumba, the people of Sumba, and to simplify Marapu customary law that has the potential to violate human rights and make worse to the economic problem in Sumba. In Indonesia, customary law, positive law must be interconnected and not conflicting with each other so that a sense of dignity, usefulness and legal certainty for the people of Sumba will be created.

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