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The Existence of *Nedosa* Customary Offence in the Sangihe Community Related to the Development and Renewal of the National Criminal Law

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ABSTRACT

The purpose of this research is to conduct an analysis and study related to how the existence of the *Nedosa* offense as a Sangihe customary crime and how this offense is included in the renewal of the national criminal law. The prohibition of *Nedosa* is still existed nowadays and is obeyed by the community and traditional leaders, the settlement is still using customary law methods even though the judicial system has been implemented by the general court. By using a normative juridical research method that focuses on the study of documents and legal materials, both laws and customary decisions are found to be (1) Judiciary, using Law No. 1 Drt/1951 concerning Provisional Measures to Organize Unitary Powers and Procedures for Civil Courts. (2) The case of Donor or "Blood Pollution" (Delik *Nedosa*) is a unique crime that only exists in the Sangihe Talaud Customary Rules. Both 1917 and 1932 customary rules as well as the 1951 declaration stated that marriage is forbidden between people whose families are in a straight line up and down, cousins, and siblings. The maximum penalty is 5 years in prison. Therefore, the role of the *Nedosa* offense is very important in the customary law which is still respected and obeyed by the Sangihe Talaud community today. *Nedosa*'s offense is wider than Zinah in the Criminal Code because this offense is related to religion and the perpetrator will be thrown into the sea.

Keywords: Customary Law, *Nedosa*, Sangihe Customary Criminal Offenses

JEL Classification: K00, K10, K19

INTRODUCTION

Customary law is a living law that grows and develops, yet it is cohesive with people's lives. According to Suryawati and Saputri (2021) say that customary law is a legal law and enforced effectively in customary communities. Therefore, customary law is respected and obeyed by the local community. Soekanto (1986) stated Indonesian customary law has existed since the Malay-Polynesians who are the original inhabitants of Indonesia. Djojodigoeno (1958) said, regarding the essence of Indonesian customary law, some urgencies arise directly as a statement of the culture of the original Indonesian people. The 1945 Constitution of the Republic of Indonesia Article 18 of the 2nd Amendment of 2000 further emphasizes respect for customary law and customary law communities. Customary practices in society as a form of local wisdom (indigenous people) that are internationally recognized.

Local wisdom comes from customary law which distinguishes Indonesian law from the law in European and American countries in general. Customary law forms indigenous peoples called legal alliances, both genealogical and territorial arrangements. Although customary law continues to experience modernization and globalization pressures, the character of customary law in the form of local wisdom remains strong. The unwritten nature of customary law guides people's lives in administering justice and welfare (Hardjito, 1969). The existence of customary law and the rights of indigenous peoples have been granted constitutional recognition in the 1945 Constitution of the Republic of Indonesia Article 18 (Sondakh, 2018). According to Nurjana, their social, cultural, and economic conditions distinguish them from other communities in the country (Nurjana, 2015).

Cultural identity and rights of traditional communities are respected in line with the development of the times and civilization, Article 26 of the 1945 Constitution and People's Consultative Assembly (TAP MPR) No. IX/2001 article 5 letter (j) essentially recognizes and respects the rights of indigenous peoples and the nation's cultural diversity over agrarian and natural resources nature. In customary law, besides regulating individual rights, landlord rights, or customary rights, it also regulates customary criminal law. The application of customary criminal law is seen in the decisions of legal officers, such as decisions of customary heads, decisions of village peace judges, decisions of religious officials, and others. The decisions are made to maintain or enforce the law. Customary law including Customary Criminal Law is a social reality that is the basis for legal officers to determine their decisions, hence the village officials, elders, intellectuals, and prominent people in the village must also follow up (Adam, 1952). Customary Criminal Law was born from the customary law community "*geestesstrucuur*" rather than the community concerned, has its style and nature, namely the law of each community is different. Customary Criminal Law is a law that is born from the community itself and it creates customary offenses that must be obeyed and respected by all members of the customary law alliance itself (Adam, 1952). Von Savigny stated that the law follows the "*Volksgeist*" (spirit of the people) of the society in which the law applies, it is because each society's Volk Geist is different so the laws of that society (Savigny, 1947).

In Sangihe and Talaud, there is one customary offense that has been preserved to this day, which is called *Nedosa*. This offense is related to cases of donation or "Blood Pollution" that occur in the family or marriage. Before the ratification and promulgation of Law No. 1 of 1974, the Marriage Regulations in National Law in Indonesia refer to the Indonesian Christian Marriage Ordinance or Huwelyk Ordonantie voor Christian Indonesians (HOCI) which came into force on February 15, 1933. However, HOCI does not apply to residents of Sangihe Talaud because the people who inhabit the 124 islands

already have pre-marriage rules called "Atoeran Adat Oentoek People Masehi Boemi Poetera Dipoelau-Poelau SANGI" in 1917 and its completion in 1932 namely "ADAT - REGELING voor Inlandsche Christenen de, Sangihe en Talaud – Eilanden".

Nedosa as a Sangihe customary criminal offense is not only a violation of the law but also morals related to disgraceful acts in society. The assessment of the presence or absence of disgraceful acts from community actors is closely related to traditional religious beliefs that are magical, namely belief in ancestors or ancestral spirits. Based on this belief, customary sanctions for perpetrators of customary violations must be carried out otherwise it will cause anger from ancestral spirits. According to custom, anger from ancestral spirits will cause havoc or plagues that will befall the entire community. An act which according to living law must be considered a criminal act but has no comparison in the civil Criminal Procedure Law (KUHP), which is considered punishable by a sentence of not more than three months in prison and/or a fine of five hundred rupiahs as a substitute punishment if the customary punishment is imposed. Convicted and the said replacement is deemed commensurate by the judge with the guilt of the convicted person…" (Article 5 paragraph (3) Sub. b. Emergency Law No. 1/Drt/1951).

Law Number 73 of 1958 declares the entry into force of the Republic of Indonesia concerning the Criminal Law Regulations for the entire Territory of the Republic of Indonesia, (Arief, 1991). The Criminal Code which is applied to the entire territory of Indonesia is a colonial legacy originating from "Wetboek van Strafrecht voor Nederlandsc Indie", the principles and basics of criminal law and colonial criminal law persist with a blanket and face (Arief, 2008). Indonesia Customary criminal law as unwritten customary law will continue to be a source of the new law in matters that have not been/not stipulated by law (Soepomo, 1979). The identification of problems from this dissertation study are as follows: (1) What is the Existence and Value of the Criminal Acts of *Nedosa* in the Sangihe Customary Law System? (2) What is the settlement mechanism for the *Nedosa* customary crime? (3) What is the significance of the concept of the Sangihe *Nedosa* customary crime in the development of the National Criminal Law?

LITERATURE REVIEW

The basis of the study and recognition of customary law and customary criminal law is rooted in the Living Law Theory the legal theory that lives in society. Friedman (2010) states "the center of the gravity of the law lies in the body (life) of the community itself, this concept was developed from the thought of Rudolf Von Jhering known as the Father of Sociological Law. The purpose of the law is to protect the interests of society and the interests of individuals. Living Law theory is in line with the thinking of Von Savigny known as the school of legal history, he states that law is a statement of the soul of the nation and its motto is "Das recht wird nicht gemacht, es ist un wird mit dem volke" which means that the law is not made, but exists and develops with nation's soul (Savigny, 1947). Customary law is a living law that continues to grow. Arief, (1991 also said that it is very urgent to study the legal system that lives in society in the current national law reform. In addition to the national legal system can support national development and the needs of international relations, but also must be sourced and not ignore the values and aspirations of the law that lives and develops in society.

In conducting a study of the values and aspirations that live in society, anthropological, sociological, and philosophical studies are needed. With this study, it is hoped that the lost pearls of traditional cultural wisdom that still live in society will be found. Customary criminal law as Indonesian cultural heritage law is an embodiment of values that live in society, including the Sangihe community with its *Nedosa* offense. The *Nedosa* offense

is a prohibition on discordant marriages based on community beliefs that are religious, magical, peaceful, and cosmic in the Sangihe area.

The study of customary criminal law and the diversity of laws in Indonesia is studied through the theory of legal pluralism. The term legal pluralism theory comes from English namely legal pluralism theory, in Dutch it is called “theorie van het rechtspluralism”, while in German it is called “theorie des rechtsplurslismus”. Lawrence M. Friedman presents the notion of legal pluralism, which means the existence of different legal systems or cultures within a single political community (Friedman, 2010). Griffiths presents the notion of legal pluralism. Legal pluralism is a condition that occurs in the region governed by more than one legal order. Legal pluralism is the emergence of a provision or a rule of law that is more than one in social life. The emergence and birth of legal pluralism in Indonesia are due to the historical factors of the Indonesian people who have differences in ethnicity, language, culture, religion, and race. Griffiths distinguishes two kinds of legal protection namely weak legal pluralism and strong legal pluralism (Griffiths, 1986). Weak legal pluralism is another form of legal centralism because even though it recognizes legal pluralism, state law is still seen as superior, while other laws are united in a hierarchy under state law. Meanwhile, the strong concept of legal pluralism according to Griffiths is a product of social scientists, refers to scientific observations about the fact that there is pluralism in all groups of society. All existing legal systems are considered equal in society, there is no hierarchy indicating one legal system is higher than the other.

In legal pluralism that applies various laws doesn’t have any legal unification. Unification exists to apply a certain kind of law to all people in a certain country. If a law is declared to apply unification, there’s only one law that applies in that country, and various laws do not apply. The object of the study of this theory is the legal pluralism that applies in social life, then the theory of legal certainty is built from the concept of the functioning of law in society. According to Charles Himawan, if authoritative law means the law that is obeyed by people who make the law and the person who is against the law is directed, the link between humans and the law will be seen here. Moreover, it is also felt the need for authoritative laws to support development. In a different context, the need for legal certainty is observed (Himawan, 2003). In principle, legal certainty is related to legal authority where the law gets legitimacy from the community. The role of law (custom) in the development of national law (especially criminal law), depends on the ability of law (custom) to be able to create predictability, stability, and fairness.

Legal certainty also applies to customary law, Soepono (1979) in his essay "Some notes on the position of customary law", gives the understanding of customary law as the law that is not written in legislative regulations (non-statutory law) including life regulations which, although not stipulated by authorities. However, it is obeyed and supported by the people based on the belief that these regulations have legal force (Soepomo, 1979). Sahetapy (2000) concludes several notes, including the theory of retaliation only looking at crime about the past; Thus, the theory of retaliation has not given reasonable value to several principles that have been institutionalized and recognized everywhere, namely the principle of opportunity, pardon, amnesty, abolition, expiration and so on. The ancient theory of vengeance has been extended in modern vengeance theory so that now the question arises, is it justifiable to call it the theory of vengeance; theoretically academic, the theory of retaliation still has relevance.

It seems that this aspect has been questioned before the era of the aspect of revenge, namely during the time of Immanuel Kant (1724 - 1804) and George Wilhelm Fredrich Hegel (1770 - 1831). Von Feuerbach was the first to compile the problem of frightening aspects into a theory which later became famous with the phrase "nullum delictum nulla poena sine praevia lege poenali", but the first to question this frightening aspect of the

psychological process was Samuel von Puffendorf, as stated by Oppenheimer. Regarding the prevention aspect, Sahetapy (2000) stated “Theoretically, general and special prevention can be distinguished but in practice the distinction is very difficult, so it may be for the sake of general prevention or the protection of the state, society, and population the convicts will be sacrificed”. The theories related to the purpose of sentencing mentioned above, both absolute theory and relative theory, each have weaknesses. Therefore, a third theory emerged, which is a combination of absolute theory and relativity theory. This theory is based on the goal of retaliation and maintaining order in society (Sahetapy, 2000).

RESEARCH METHOD

The research method used in the Existence Analysis of the Sangihe *Nedosa* customary criminal offense is normative legal research. Normative legal research-actual facts, the steps are taken are not limited to data collection but include analysis and interpretation of the meaning of the data.

The research method used is normative juridical, which focuses on the study of legal norms which live in society and is supported by applicable laws and regulations. This research focuses on primary, secondary, tertiary legal materials related to the focus of the study.
Sources of data in this study were obtained by reviewing and analyzing literature or research data. The previous one was about the *Nedosa* offense and Sangihe customary law documents and related laws and regulations. The legal materials used are:

1. Regional Emergency Law Number 1951 Concerning Handling Customary Law cases by the General Court.
2. Law no. 8 of 1981 concerning Criminal Procedure Law or abbreviated as KUHAP.
3. Article 18 of the 1945 Constitution concerning the recognition of customary law and indigenous peoples and the rights inherent in them.

RESULTS

The existence of the Prohibition of the Criminal Acts of Contributing *Nedosa* in the Sangihe community still exists today but the handling in the litigation process is different. In the past, the handling of *Nedosa* customary crimes in marriages that are related by blood is directly handled by traditional elders through customary courts, now it has been handled by the general court or local district court and Talaud. *Nedosa* offenses are carried out by the community and are obeyed by the whole community as well as an instrument to punish the perpetrators of discordant crimes or moral crimes. This offense lives and develops in the community and is supported by law enforcement officials such as village judges, village elders, and traditional and religious leaders. This offense is recognized as very effective in eliminating the deterrent effect for the perpetrators as well as tackling various moral violations that are not regulated in the National Criminal Code.

Since Sangihe Talaud's ancient times, the prohibition of *Nedosa* has been in effect, as quoted by the historian to a time closer before the Dutch colonialism and the entry of Semitic religion (Abramic Religion) into the "*Mamenong Kati*" (Sangihe Talaud) archipelago. Sunk into the sea, or rewarded with social work carrying and collecting stones, or paraded as moral criminals like the Scarlet Letter tragedy as a form of punishment in the Puritan Christian community in the early formation of America, which *Nedosa*'s offense is the punishment.

The *Nedosa* offense is a positive legal offense from the dynamism of the Sangihe Talaud indigenous culture which is strongly influenced by Hindu balance theories such as the

Fun See or Esho Funy ideology developed by the Fashu Bandhu philosopher. Philosophically *Delik Nedosa* in addition to meaning punishment also means a ritual to induce compassion for mechanical forces that dominate and affect all aspects of human life and the universe (Read: Cosmic Satal). The culture of the ancient Sangihe Talaud society and even though it has metamorphosed into the Christian ethos until now – strongly believes that blessings and curses are largely determined by mechanical forces in nature. This mechanical force in the cosmology of semitic religions is understood as Divine, and in Christianity it is known as God known in Jesus Christ. Therefore, the main struggle of the ancient Sangihe Talaud man was paraded towards the occurrence and maintenance of balance, in which only in balance does blessing exist. The term incest comes from the Latin word “incestus”, while the word *incestus* itself is the root word in Latin is *castus,* which means pure or holy (Ingg, chaste, pure). So, in terms of terminology, the term *incestus* means impure. The word incest has been given a special meaning namely as sex between close relatives.

Regarding what is meant by the term incest, in an electronic dictionary it is stated that R. Supomo put forward the notion of incest and the angle of customary law with the following description: An offense which destroys the basic structure of society, so that it is a very serious offense, is "incest". This prohibition may be because family ties are too close or because of the regulation that one must marry outside the clan group, as is the case with Indonesian ethnic groups which are arranged based on male lineage or patrilineal (Supomo 1963:102). Incest is sexual intercourse between people who according to customary law there is a prohibition on marriage between them. Hadikusuma (2014), in discussing the book Kuntara Raja Niti which is part of the Lampung Customary Law, provides the following information in the indigenous people of Lampung *pepadun* if there is a family who commits adultery between them. It means that he is destroying the earth or destroying the *pepadun* (throne of confusion). *Pepadun* is called "*pepaduntelekep*" (face down the stomach upside down). With the inversion of a *pepadun*, it means that all the indigenous people of the *pepadun* concerned are removed by the surrounding customary community. In Lampung customary law there is a term specifically intended for sex between close relatives, namely “*pepaduntelekep”.*

Settlement of Customary Crimes According to the Sangihe Customary Law follows the customary justice system which has become a tradition and has been passed down from generation to generation. Although it has become a tradition to obtain national recognition, the Sangihe customary justice system must adapt to the criminal justice system in the Criminal Procedure Code. Law No. 8 of 1981 is a formal law related to events and how to maintain material law, especially criminal law that is violated. The criminal procedure law applies to all violations of material criminal law, including customary crimes such as the *Nedosa* crime in Sangihe Talaud. When there is a violation of customary criminal offenses, the settlement still refers to the process in the Criminal Procedure Code (Law No. 8 of 1981).

In criminal procedural law, the procedural procedures are adjusted to the judicial power system in force in Indonesia, including the criminal procedural law relating to customary criminal offenses. In the customary law system, the process for handling the *Nedosa* offense is under the customary judicial process that has been carried out for generations in Sangihe and Talaud districts. The judges and law enforcement officers in the process of handling the *Nedosa* offense are the village head (*opolao*) and traditional elders. The simple handling process for arrested suspects is tried directly at home or village head's place and an investigation is carried out. If found guilty, then the customary punishment will be immediately carried out, in its development the system for handling the *Nedosa* offense which was carried out at the village head's house, was further directed to the local customary court.

The existence of customary justice is often questioned. This is because the systems and mechanisms referred to as customary courts seem to be outside the formal legal mechanisms that apply in Indonesia. It is undeniable that since 1945, there are almost no statutory provisions in Indonesia that provide opportunities for the existence of customary courts in Indonesia, except for Law Drt No.1 of 1951 concerning the validity of customary law related to criminal provisions as well as the regulation of customary criminal sanctions in the system Indonesian law. In practice, customary justice often clashes with formal law, where historical facts show that colonialism in the past caused European law to dominate the legal system in many former colonial countries, including Indonesia. However, even though this institution is not formally recognized in the field, this mechanism is another alternative that is often taken by justice seekers, especially in a society that is still based on traditional patterns of life with the norms that govern it.

The settlement of cases of customary crimes has been delegated to the general court or district court by the two laws. Customary justice is still alive and practiced in the reality of people's lives, but this reality has not received proper recognition in state law, especially in the laws governing judicial matters. The need for a customary justice mechanism is not only because to reach the formal system as outlined by the laws and regulations there are geographical constraints (for example for remote communities) but also the normative reasons for the settlement mechanism and sanctions which are sometimes not or cannot be declared fair, not to mention the length of time process to go through. In the course of history and then changing the position of customary institutions and customary courts through the second Amendment to the 1945 Constitution of the Republic of Indonesia in 2000 in Article 18B paragraph (2) and Article 28I paragraph (3) which in essence states: first, recognize and respect the existence of customary law community units and their traditional rights; second, respecting the cultural identity and rights of traditional communities as part of human rights that must receive protection, promotion, enforcement, and fulfillment from the state, especially the government.

DISCUSSIONS

Customary offenses in their implementation are recognized and respected by the entire community, especially in rural communities in Sangihe. He admitted that the *Nedosa* customary offense was escorted by the village head (opolao) who served as the customary head to act and prosecute the perpetrators who violated the customary offense. The community is traditionally very obedient to the *Nedosa* customary offense and feels disgraceful if it violates the offense, thus the existence of the customary offense is recognized and carried out by the community consciously and sincerely for generations. Thus, the concept of the *Nedosa* offense has been integrated into the Sangihe communities and the person who violates it will feel humiliated. The *Nedosa* customary offense is very significant with the development of the National Criminal Procedure Code related to the handling of the Donor cases in the Criminal Acts of Marriage by the District Court. Following the author's research, the significance can be seen as follows:

a) Handling of Criminal Offenses in Criminal Cases by the Court

This discordant case is said to be very principled as a criminal offense in the traditional rules of the Sangihe Talaud community because it involves the community's belief in the existence of social effects in the form of natural disasters that cause havoc for the community and involves the honor of the family line that bears the unspeakable shame that will be caused as a result of the act of the criminal act of discord.

The case of Donor or “Blood Pollution” (*Delik Nedosa*) is indeed a unique crime that only exists in the Sangihe Customary Rules. Both the 1917 and 1932 customary rules and

the 1951 declaration stated that marriage was forbidden between people whose families were in a straight line up and down, cousins, siblings. Maximum of 5 years imprisonment. Therefore, the role of *Delik Nedosa* is very important in the rules of customary law which are still respected and obeyed by the Sangihe community today.

On the other hand, the provisions of the Marriage Law no. 1 of 1974, already includes provisions in Burgerlijk Wetboek (BW) which also have similarities with the Sangihe Talaud Marriage Customs (1917) and (1932) especially in the title:
a. Obtaining and Losing civil rights.
b. Civil Registration Deed
c. Place of residence or domicile
d. Marriage
e. Rights and obligations of husband and wife
f. Marriage Assets Association according to the Law and its management
g. Terms of marriage
h. Terms of marriage or marriage with conditions on the second marriage and so on
i. Separation of property
j. Dissolution of marriage
k. Divorce Desk and bed
l. Issues regarding fathers and offspring
m. Blood family relationships and pregnancy issues
n. Parental powers
o. Questions about minors and guardianship
p. Statement of maturity
q. Curator problem
r. The problem of not being in place.

Meanwhile, the issue of inbreeding or the case of Donation (*Nedosa*) is considered to have escaped the scope of Law no. 1 of 1974, even though this offense is very important in regulating the order of life and marriage for the Sangihe communities, and its existence cannot be simply abolished with the enactment of Law Number 1 of 1974.

Thus, the very principle legal principles contained in Article 25 points a, b, c, d and Chapter XIV Article 88 paragraphs 1 and 2 and later refined in the declaration of the Sangihe Customary Council dated September 6, 1951, concerning Incest cases. Or the Contributing case (*NEDOSA*) is deemed necessary to be re-entered as complementary material in the formation of the national criminal law. Such improvement is deemed necessary based on considerations, among others:
a. The current marriage law views the matter of marriage in civil law.
b. Law No. 1 of 1974 concerning Marriage, as well as Government Regulation no. 9 of 1975, has not accommodated and regulated the issue of inbreeding or marital discord.

The neglect of the Sangihe Talaud Traditional Marriage Rules as regulated in Chapter IV article 25 and Chapter XIV article 88 paragraphs 1 and 2 along with the formulation of the Sangihe customary council declaration in 1951, by the current marriage law will distort and kill the existence of these rules normative law that applies in the customary law of the Sangihe Talaud community. The death of the existence of normative rules in the Sangihe Talaud community regarding incest (the Contributing case) is already felt at this time and greatly disrupts the socio-cultural order of the people in Sangihe Talaud such as cases of marriage of siblings, grandchildren, and acts of adultery brothers and sisters, father-daughter adultery, Grandfather and grandson's adultery, also same clan marriage. For people in other tribes, inbreeding and clan marriage (vam) can be done, but in the Sangihe community it is very strong and is categorized as a crime and violation that needs to be given legal sanctions. That the position of customary norms needs to

be preserved and preserved because it is a value system that applies and becomes a guideline for the social life of the community traditionally.

Whether or not the handling of the *Nedosa* case is firm depends on the community's respect for ancestral culture. This is also related to the system of handling *Nedosa*'s criminal offenses by the court against the perpetrators. The ancient Sangihe community culture – and even though it has metamorphosed into the Christian ethos – strongly believes that blessings and curses are determined by mechanical forces in nature. This mechanical force in the cosmology of Semitic Religions is understood as Divine, and in Christianity it is known as God the God known in Jesus Christ. So the main struggle of the ancient Sangihe man was paraded towards the occurrence and maintenance of balance (Nasaruddin, 2001). For it is only in balance that blessings exist. This breach of balance must be called a curse or a disaster. Disasters always stem from the denial of ethics and ethical laws in society and nature. To recover from the disaster, an investigation, interrogation and finally if the culprit is found, he will be charged with the offense of *Nedosa*. The severity of a punishment is determined by how big the social effect of the mistake he has made.

Marriage is very important for human life because marriage is a way for people to maintain their lineage. Although everyone must get married and is ordered by religion, in some cases not all marriages can take place, even though the marriage has fulfilled all the pillars and conditions specified. Because marriage is still dependent on one thing, namely marriage that has been separated from all things that hinder. Regarding the prohibition of marriage, it is regulated in Article 8 of Law Number 1 of 1974 concerning marriage which reads: Marriage is prohibited between two people who:

a. Blood-related in straight lineage down and up.
b. Blood-related in a deviant lineage, namely between siblings and between a person and a parent's brother and between a person and his or her grandmother's brother.
c. Sexual intercourse, namely in-laws, stepchildren, daughter-in-law, and mother/stepfather.
d. Breastfeeding, namely nursing parents, nursing siblings, nursing children, and breastfeeding/breastfeeding aunts.
e. Having a sibling relationship with the wife or as an aunt or niece of the wife, if a husband has more than one wife.
f. Having a relationship which by his religion or other applicable regulations, is prohibited from marrying.

The prohibition of marriage according to Article 8 of Law Number 1 of 1974 concerning marriage involves several prohibitions, namely the prohibition against those who are related by blood, those who have sexual relations, those who have a relationship of marriage, those who have a relationship between the parties and those that are related to religious prohibitions, and do not mention the prohibition according to customary kinship law. Based on the sound of Article 8, marriages that are prohibited have been listed and elaborated, then apart from the sound of Article 8 all marriages between a man and a woman can be carried out and are valid according to national law. Marriages that do not violate the provisions of Article 8 are legal and receive legal protection. Apart from that all Islamic law and customary law (customs) also determine whether marriage is legal or not in society. Islamic law and customary law contribute to the formation of national law in Indonesia. If we look back at the reception theory which says, Acceptance of foreign law as one of the elements of the original law. Foreign law here is religious law, while the original law is customary law.

The current practice of indigenous peoples still adheres to the existing customary provisions, so the legal rules that have been made by the government are not

implemented because they adhere to customary rules. In contrast to the practice that occurs in the Sangihe Talaud community, they are prohibited from marrying if they still have family relations until the third generation. This means that they are prohibited from marrying if they have the same grandparents called relatives. Marriage between your relatives is strictly prohibited because they are considered brothers. Meanwhile, according to Article 8 of Law Number 1 of 1974 they are not prohibited from marrying. This is the difference between customary law and national law.

Law enforcement in a society has its tendencies caused by the structure of the society. The community structure is an obstacle, both in the provision of social facilities that enable law enforcement to be carried out, as well as providing obstacles that cause law enforcement cannot be carried at least it cannot run as expected (Rahardjo, 2009). The law has outlined that judge as law and justice enforcers are obliged to explore, follow, and understand the legal values that live in society. This obligation should also be imposed on other law enforcers, such as the police and prosecutors.

The position of law enforcement is only as a catalyst if needed. In this case, the involvement of law enforcement is not part of the conflict faced by the perpetrator and the victim, by representing the victim and the community, but only facilitating, accelerating, and resolving the problem, without taking part in the problem itself. As has been said above, law enforcement is not an activity that stands alone but has a close reciprocal relationship with the community. Therefore, in discussing law enforcement, it is best not to ignore the structure of the society behind it.

Further explanation regarding this matter is that law enforcement officers should also entrust the community's resolution of its legal problems, in accordance with the legal values that live in the community. The community still recognizes, maintains, and uses unwritten law, must be encouraged to maintain it as a settlement mechanism, by "restraining" not to become a driving force for periods of upheaval and changes in attitudes or culture of the community.

CONCLUSION

The existence of the customary law of the *Nedosa* offense persists in the Sangihe Talaud community, which is why this rule is cohesive with the Culture and Culture of the Sangihe Talaud community. Article 18 B of the 1945 Constitution as a result of the Amendment, Article 1, Article 5 paragraph (3) sub b of Law Number 1 Drt of 1951, Article 5 paragraph (1), Article 10 paragraph (1) and Article 50 paragraph (1) of Law Number 48 Year 2009.

The process of settling discordant acts follows the customary criminal law system developed so far which is simple and uncomplicated. The process of resolving acts of discord or "Blood Pollution" according to customary criminal law is carried out in the Sangihe Talaud community which is unique which only exists in the Sangihe Talaud Customary Rules. Both the 1917 and 1932 customary rules as well as the 1951 declaration stated that; Marriage is forbidden between people whose families are in a straight line up and down, cousins, siblings. The maximum penalty is 5 years in prison. Therefore, the role of *Delik Nedosa* is very important in the rules of customary law which are still respected and obeyed today by the Sangihe Talaud community.

The offense of *Nedosa* is still very important in the rules of customary law in the Sangihe Talaud community, it turns out to be appreciated. Materially, the existence of customary criminal law still has a place in Indonesian criminal law through Law Number 1 Drt of 1951 and Law Number 48 of 2009 concerning Judicial Power. Strengthening customary law can be done through the effectiveness of the power of the judiciary with judicial

decisions that fully enforce the aspects of customary law. The judiciary as a bastion of legal discovery if in its decision it has adopted the values of customary law, then morally it will strengthen people's beliefs about the existence of customary law even though customary law is in a variety that is no longer unwritten. With the recognition of the *Nedosa* customary criminal law which is parallel to positive law, the government and local governments should socialize so that the public knows and obeys. Socialization is important so that there is no dualism of treatment so that people still consider customary law to be equal in value to positive law and should not be violated.

The uncomplicated and complicated process of settling *Nedosa* customary crimes should serve as an example in criminal settlements. In modern judicial practice, many interests are surrounding the case, causing the judicial procedure to be complicated and convoluted so that a single case is easily resolved and becomes lengthy and costly. The cheap customary settlement system should be an example in handling Indonesian cases. The offense of *Nedosa* which combines law and morals is still very important because in modern society law violations are only limited to breaking the law, while moral violations are considered not to violate the law. This conception is certainly very dangerous because ignoring morals is the same as ignoring the noble principles of customary law.

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REFERENCES

Adam, L. (1952). *Method and Forms of Investigating and Recording of Native Customary Law*. Jakarta: Bhara.

Arief, B. N. (1991). *Complementary to Criminal Law Lecture I*. Semarang: Sudarto Foundation.

Arief, B. N. (2008*). Bill on the New Criminal Code A Restructuring and Reconstruction of the Indonesian Criminal Law System*. Jakarta: Radjawali.

Djojodigoeno. (1958). *Principles of Customary Law*. Yogyakarta: GAMA.

Friedman, M. (2010). *Buku Ajar Keperawatan keluarga: Riset, Teori, dan Praktek. Edisi ke-5.* Jakarta: EGC.

Griffiths, J. (1986). What is legal pluralis. *Journal of Legal Pluralism and Unofficial Law, 24,* 2986*.*

Hadikusuma, H. (2014). *Customary Criminal Law*. Bandung: Alumni.

Hardjito N. P. (1969). *Customary Law, Understanding, and Restrictions in National Law*. National Law Magazine Number 4 of 1969, Jakarta p.4.

Himawan, C. (2003). *Law as commander*. Jakarta: Penerbit buku kompas.

Nasaruddin, L. H. S. M. (2001). *Marriage Science Problems Regarding Family and Household*. Bandung: Hidayah Library.

Nurjana I. N. (2015). *State Relations and Indigenous Peoples, Dr. Rachmad Safa'at, S.H, M*, The Editor. Malang: Surya Pena Gemilang.

Rahardjo, S. (2009). *Law Enforcement a Sociological Review*. Yogyakarta: Genta Publising

Savigny, V. (1947). Staatsrecht Van Nederland Indie Emergency Law No. 1/Drt/1951. Retrieved from http://www.reddplus.go.id/kegiatan/kegiatanmasyarakat.

Sahetapy, J. E. (2000). *Viktimologi sebuah bunga rampai.* Jakarta: Pustaka Sinar Harapan.

Soepomo. (1979). *Chapters on the Customary Law*. Jakarta: Pradnya Paramita

Soekanto, S., & Mamudji, S. (2004). *Normative Legal Research*. Jakarta: PT. Raja Grafindo Persada.

Soekanto, S. (1986). *Introduction to legal research*. Jakarta: UI-Press.

Sondakh, J. (2018). *Contemporary Approach Customary Law*. Manado: UNSRAT Press.

Suryawati, N., & Syaputri, M. D. (2021). Harmonization of the application of customary law and positive law in village communities of Malang regency. *International Journal of Applied Business and International Management, 6*(2),1-12.