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The Law of Returning Dowry in The Banggai Tradition

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Research Objective: This research aims to examine the Law of Dowry Return in Banggai Tradition. **Theory:** This research used Gustav Radbruch's Legal Objective Theory, which has three basic assumptions of legal objectives, namely: justice, expediency, and legal certainty, and all three are legal objectives mutually. **Method:** This research is a qualitative research using the Legal Pluralism Paradigm. **Results of the Research:** Banggai, as a former Islamic Sultanate that had existed since the end of the 16th century, inherited many tangible and intangible legacies that can still be found in the community today. One of them is the Law of Dowry Return in Banggai Tradition, a tradition that is still alive in the midst of the community, and becomes an unwritten legal norm, which applies in a particular community environment (hybrid law or unnamed law). The research is objectively analytical, which means that customary law is studied positively and negatively. This research found that the law of returning dowry still remains valid in the Banggai community, both Muslims and Christians.

Keywords: Customary Law, Dowry Return, Banggai Tradition.

INTRODUCTION

Banggai is currently known as the name of three districts: Banggai, Banggai Islands and Banggai Laut; the name of one island, Banggai Island, and the capital of Banggai Laut, Banggai. The name Banggai, had been existed for 400 years ago, with the establishment of a Kingdom called the Kingdom of Banggai, and in the records of Wikipedia (2023), Banggai is the First Sultanate in Central Sulawesi. The Kingdom of Banggai is recorded to have been established in 1571 AD (Madina, et al., 2012), to the 16th century and earlier (Samatan, et al. 2023), and was officially admitted to the Republic of Indonesia through Law No. 29 of 1959 on the Establishment of Level II Regions in Sulawesi (based on Law No. 29 of 1959), The Banggai onderafdeling area, which includes the entire former Banggai Swapraja area as part of the Poso afdeling area, was declared independent as a level II self-governing area, with the name "Daerah Tingkat II Banggai" with the government located in Luwuk. On December 12, 1959, the government was handed over from the last king of the Banggai Kingdom, Syukuran

Aminuddin Amir as the Chief Government Officer of Banggai State in Luwuk to Bidin as the first regent of Banggai Region Level II (Banggai Government Website, T.th.).

As a kingdom that has existed for four centuries, Banggai has left a legacy of tangible and intangible culture. One of the intangible cultures that is still used in the Banggai community is the Customary Law. Customary law, which is unwritten and varies from one community to another, is important to analyse its development. There are many terms used to name local law: traditional law, customary law, native law, folk law, and specifically in Indonesia "*hukum adat*" (Simangunsong, 2014). In its development, customary law in society depends on the awareness, legal paradigm, legal politics and understanding of its practitioners - politicians, judges, lawyers, bureaucrats and the community itself. Customary law and its application depend on and exist within the community.

One of the customary laws in the Banggai community is the Law of returning dowry, which is a form of unwritten law, but is still carried out in the Banggai community. Those who do not return will be ridiculed and ostracized in the community, and become a moral burden to the person. Usually, those who are ostracized will choose to leave their hometown and move away from their community. Based on the background, this research paper will examine the Law of Returning Dowry in the Banggai Tradition.

LITERATURE REVIEW

Legal Positioning Study

The position of law as modern law has narrowed its meaning because law has increasingly become something autonomous, separated from the realities and values that should be its substance and support. This results in a state of law that has been flawed since its establishment, a legal tragedy. This ideology of legal centralism is the mother of legal positivism which is often called modern law, at the most extreme understanding is that the law must be liberated which is interpreted as purified - from non-legal values (ethics, morals, religion), so that the law is value free, which is positivized in the form of regulations and which comes from the State in the written form. This type of law is currently very dominant and as a support for modern-liberal countries, even ultramodern-neoliberal countries, supported by its developers (legal education, professionals with strict standardization).

In contrast to legal centralism is legal pluralism. The notion of legal pluralism places one legal system equal to another legal system. According to Satjipto Rahardjo (in Simangunsong, since the emergence of centralized modern law from the state, other types of law such as customary law and other customs have begun to be displaced. Even if these types of law still apply, then it all happens because of the "generosity" of state law (by the grace of state law). There are several types of legal pluralism. The first type is called: Relative Pluralism (Vanderlinden 1989, in Hadikusuma, 1992), Weak Pluralism (J.Griffith 1986) or State Law Pluralism (Woodman 1995:9) refers to a legal construction in which the dominant legal rules make implicit or explicit room for other types of law, for example customary law or religious law. State law validates and recognizes the existence of other laws and includes them in the state legal system.

The second type is called Strong or Descriptive Pluralism (Griffiths, or Pluralism. (Woodman) Legal pluralism refers to a situation in which two or more legal systems coexist, each with its own basis of legitimacy and validity. The paradigm of understanding customary law and its development must be placed in a large space, with a broad study:

1. A study that no longer looks at a country's legal system in the form of state law, but also customary law, religious law and the common law;
2. The understanding of (customary) law is not only to understand customary law in traditional communities - rural communities, but also the law that applies in certain environmental communities (hybrid law or unnamed law);

3. Understanding the phenomenon of transnational law as law made by multi-lateral organizations, there is an interdependence relationship among international law, national law and local law.

With a holistic and integrative understanding, the development and position of customary law will be adequately understood. So, the study of customary law in the development of studying customary law throughout its development in society, is carried out critically objectively analytically, meaning that customary law will be studied positively and negatively. Positively means that customary law is seen as a law that originates from the thoughts and ideals of the community. On the contrary, the negative development is how customary law is side-lined and displaced or does not apply at all by the existence of positive law represented by the State both in legislation and in court decisions.

As stated: customary law is actually linked to a society that still lives at the level of a sub-system, so its suitability for modern urban life is beginning to be questioned. Customary law in its development today is influenced by: The legal policy adopted by the State and the method of approach used to discover the customary law.

The Development of Customary Law in Positive Law in Indonesia

Customary Law in Indonesia is a law that develops and lives in the midst of society (Salim, 2015). Some clauses about Customary Law in Indonesia can be explained as stated below:

- a. Indigenous Indonesian Law Customary law grew out of the ideals and thoughts of the Indonesian society. Therefore, customary law can be traced chronologically since Indonesia consisted of kingdoms, which were scattered throughout the archipelago. During the Srivijaya, Old Mataram, Majapahit periods, several inscriptions (*prasasti*) describe the development of the applicable law (original law), which has regulated several fields, including:
 1. Indigenous Indonesian Law, Customary law grows out of the ideas and thoughts of the Indonesian people. Therefore, customary law can be traced chronologically since Indonesia consisted of kingdoms, which were scattered throughout the archipelago. The Srivijaya period, Ancient Mataram, Majapahit period, several inscriptions describe the development of the applicable law (customary law), which has regulated several fields, among others:
 2. Religious, economic and mining regulations, found in King Sanjaya's inscription, in the year of 732, in Kedu, Central Java.
 3. Regulating religion and work, found in Raj Dewasimha's inscription, year of 760;
 4. Land and Agricultural Law found in the inscription of King Tulodong, in Kediri, year of 784, and the inscription year of 919 which includes government positions, the king's right to the land, and compensation;
 5. Laws governing civil justice, found in the inscription of Bulai Rakai Garung, in the year of 860.
 6. The King's order to compile customary rules, in the Darmawangsa inscription in 991; During Airlangga's era, there was a determination of the royal seal symbol in the form of the head of the Garuda bird, the development of *perdikan* with its privileges, the determination of income tax to be collected by the central government.
 7. In the Majapahit era, it can be seen in the arrangement of the government and state administration of the Majapahit kingdom, the division of institutions and government agencies. After the fall of Majapahit, the Mataram kingdom was strongly influenced by Islam, so the *qisas* court was known, which provided consideration for the Sultan to decide cases.

b. Dutch East Indies Legal Policy Toward Customary Law

In the beginning, the indigenous law of the community known as *Hukum Adat* (Customary Law) was left as it was, but the presence of the VOC era can be noted as the following developments:

- 1) Its attitude was not always fixed (depending on the interests of the VOC), as it had no interest in the native courts;
- 2) The VOC did not want to be burdened by unnecessary administrative matters relating to the native courts;
- 3) With regard to native institutions, the VOC depended on necessity (*opportuneits politiek*);
- 4) The VOC only interfered in criminal matters in order to uphold public order in society;
- 5) Regarding civil law, customary law was left to prevail.

Dowry in Islamic Law

Mahar or Dowry, etymologically means dowry. In terminology, dowry is "An obligatory gift from the prospective husband to the prospective wife as the sincerity of the prospective husband's intention to create a sense of love for a wife to her prospective husband (Ghozali, 2010). Dowry is the property that a wife is entitled to, which must be given by the husband either because of a contract or actual intercourse (Az-Zuhaili, 2011). In the Al-Munawwir dictionary, the word dowry means dowry (Munawwir, 1997). In Indonesian dictionary, dowry is a mandatory gift in the form of money or goods from the bridegroom to the bride when a marriage contract is held (KBBI, 2023).

In the Compilation of Islamic Law, the obligation to pay dowry is found in Article 30 of Chapter V which specifically regulates the issue of dowry. This is an indication of Islam's efforts to pay attention to and respect the position of the wife (Novia, 2016), namely giving the right of authority to hold her affairs. Overall, in the Compilation of Islamic Law, the regulation of dowry is stipulated through articles in Chapter I, Chapter V, Chapter XVII.

Chapter I, General Provisions, Article 1 Point d: Dowry is a gift from the prospective groom to the prospective bride, whether in the form of goods, money or services that are not against Islamic law;

Chapter V, regarding the Dowry, Article 30: The prospective groom is obliged to pay a dowry to the prospective bride which amount, form and type are agreed upon by both parties.

Article 31: The amount of dowry is determined based on the simplicity and convenience recommended by Islamic teachings.

The regulation of dowry in the Compilation of Islamic Law is also included in Article 32; Articles 33, 34, 35, 36, 37 and 38; as well as Chapter XVII as a result of the break-up of marriage, which regulates the repayment of dowry, if the dowry has not been paid.

THEORETICAL OVERVIEW

The theory of legal purpose as presented by Gustav Radbruch was written in 1932, through a study in Chapter II, Legal Philosophy (Harvard University Press, 1950). Radbruch's study of law, later known as the "Radbruch Formula", was outlined through several assumptions, namely: Radbruch's legal philosophy system states that law enforcement will fulfil the three expected standards which Radbruch sees as a "triad", namely between legal certainty, justice and utility, or (1) Justice (*Gerechtigkeits*); (2) *Zweckmasigkeit*; and (3) Legal Certainty (*Rechtsicherheit*) (Julyano & Sulistyawan, 2019).

Gustav Radbruch's Triad Theory

Law enforcement will meet three expected standards which Radbruch sees as a "triad", namely: legal certainty, justice and utility. The ideal of law (*rechtsidee*) is to create justice (*gerechtigheid*), utility (*doelmatigheid*), and legal certainty (*rechtmatigheid*).

According to Gustav Radbruch, the existence of law is intended to provide justice, legal certainty, and legal benefits (Hermawati & Widowaty, 2018). Laws that are made must be able to provide a sense of justice, legal certainty and law as a means of integrating social interests. Law formation must be able to guarantee the interests of the people, and law enforcement must be able to realize justice, expediency, legal certainty. Legal certainty is a very fundamental need of society, while fair legal expectations can only be met on the basis of certainty through legal positivization. Based on this understanding, certainty and justice are the essence of law in the sense that the implementation of law properly, then positive law must be a realization of the principles of justice which are the basic human demands to be fulfilled.

If the law in society has fulfilled these three elements, it can be considered that the purpose of the law has been achieved. All three of them synergize to create an ideal law. The law is fair if it has legal certainty and is useful. The law has legal certainty if it is fair and useful. The law is beneficial if it is fair and has legal certainty.

The reason why legal certainty is one of the objectives of the establishment of law is so that in its implementation it can be applied properly. In the Indonesian context, this is affirmed in the constitution, that everyone is entitled to recognition, guarantees, protection and certainty of a just law and equal treatment before the law. The existence of state protection related to legal certainty gives rise to laws that have benefits. Legal expediency also needs to be considered because everyone expects benefits in the implementation of law enforcement. Do not let law enforcement actually cause disturbance to the community.

When we talk about law, we tend to look only at the rules that exist and are sometimes imperfect and not aspirational. So, it takes all three elements to get a proportional law for the community.

METHODOLOGY

The method applied in this research is the Empirical Legal Research Method which is legal research that analyzes the application of law in reality to individuals, groups, and legal institutions (Samatan, 2018). Empirical legal research is a legal research method that uses empirical facts taken from human behavior, both verbal behavior obtained from interviews and actual behavior carried out through direct observation. This type of method is simply carried out by examining the actual situation that occurs in the community, namely looking for facts related to research problems. The research was conducted to the Banggai community group, about the existence of the Dowry Return which is still enforced in the Banggai community.

The purpose of legal research is to "find out what has happened and is happening ..." (Muhaimin, 2020). The purpose of the research on the Law of Returning Dowry in Banggai Tradition is to find out the existence of this customary law, whether it is still practiced by the community, or whether there has been a shift in the Law of Returning Dowry. The research was conducted through observation and in-depth interviews with representative informants.

RESULT AND DISCUSSION

Determination of Dowry

The research found that dowry is obligatory in Banggai tradition (Abuhajim, Interview, November 2023), given from the man who is getting married to the woman he is marrying. When proposing, a man usually comes alone or is represented by a family

confidant, such as an uncle, or a respected person in the community, and usually more than one person, to come and propose to a woman who has been known before, or introduced to him by someone or family.

As explained by Uda'a (Interview, November 2023), when coming to propose, one of the things that is discussed and determines whether or not the proposal is accepted, is the matter of dowry. The woman will determine the amount of dowry to be given and it is usually in the form of fixed and current assets. Most current assets are in the form of money or gold and silver, and livestock in the form of goats or cows. Dowries for non-movable objects or fixed assets, which are usually given to women, are mostly coconut trees, clove trees, fields or houses (Uda'a, Interview, 2023). The discussion of the dowry takes place at the time of the engagement, and there must be an agreement between the two parties. If the dowry has not been agreed upon, the proposal may be rejected. Therefore, the messenger who comes from the man's side must be someone who is capable, respected and good at negotiating about many things, including the dowry. Before going to the house of the bride-to-be, the messenger usually has already found out about who and how the family are. A good introduction to the family of the woman to be proposed to can simplify the negotiation process. As stated by Abuhajim (Interview, November 2023), he has been sent several times by several families to be a spokesperson for the marriage.

"....I was asked several times by families, both relatives and not, to propose. The first thing I did was to ask for a few days' time from the man's family, to learn about the woman's background, where she came from, the family structure, her education level, and so on. The purpose is so that I know who the woman is, and can prepare myself to make the proposal and be the spokesperson for the man" (Abuhajim, Interview, 2023).

According to Abuhajim, getting to know the woman is important for negotiations, especially on the dowry. Because, "...if the dowry is agreed upon, usually the other things will be easier to discuss later" (Abuhajim, Interview, 2023). The dowry is usually determined by the standards of the local community, as well as the standards of the respective families. The higher the education, occupation, especially of the woman to be proposed to, will usually also affect the amount of dowry requested by the woman. According to Abuhajim, being a spokesperson in the marriage proposal process is a big responsibility, as it will determine the success or failure of the negotiation process (Abuhajim, Interview, 2023).

For a well-established man, or a man's family with sufficient wealth, the dowry is usually not determined by the male party who proposes, and will usually be accepted by the woman who is proposed to, because it is considered in accordance with the status, level of education, and also the societal structure. Because the higher the structure in society, the more educated a woman is, the more income a woman has, the higher the dowry will be.

The Returning Dowry

The return of dowry is not recognized in the Compilation of Islamic Law, but it is recognized in Banggai tradition, both for Muslims and Christians. The return of the dowry occurs if one of the spouses, both man and woman, decides to cancel the marriage that was agreed upon at the time of the engagement. According to Abuhajim, there are three possibilities that can occur, namely:

- 1) If the engagement that has already taken place is agreed to be annulled by both parties because each feels unsuitable;
- 2) If the annulment is done unilaterally by the male party because he chooses to marry someone else;
- 3) If the woman cancels the engagement because she finds it unsuitable and chooses another man, but the previous engagement has not been cancelled.

In the first case, if both parties consider that they are not compatible with each other before the marriage, and they agree to separate, then there are two possibilities: This can happen, because the annulment occurs from both parties who feel that not being able to continue to the level of marriage is the best option, because there may be no compatibility between the two parties, both the man and the woman.

In the second case, the annulment is done by the man, for various reasons. In this case, the woman did nothing wrong, and it was the man who made the mistake, for example, the man had problems with another woman, or there were other considerations from the man and his family, either known or unknown to the public, and led to the annulment of the marriage. In this case, the woman does not need to return the dowry, as it is considered a 'customary punishment' to the man who has betrayed the mutual agreement in the engagement (Uda'a, Interview, 2023). The penalty is that the dowry that has been given is not returned by the woman, and the man has no right to ask for the return of the dowry. If the dowry has not been paid, the man's obligation is to pay the agreed-upon dowry to the woman, even when they cancel the marriage.

Thirdly, the annulment is done by the woman, perhaps because she is married to another man or for the known and unknown reason to the public. In this case, the woman was required to return double the dowry that she had received. In this case, the woman is obliged to return the dowry given by the man at the time of the proposal, and must pay the "fine" by paying a dowry equal to the amount given to her by the man. For example, if the woman receives a dowry of 100 coconut trees that have begun to bear fruit, then she must return the 100 coconut trees that have been given, and another 100 coconut trees as a penalty for cancelling the marriage. In total, the woman must return to the man the amount of dowry she received, plus a "fine" equal to the dowry she received.

According to Uda'a, the time for returning the dowry is usually determined, for example a month after the annulment takes place. The return and punishment is considered "obligatory" by custom, and if one does not return, it will be a disgrace to him/her and his/her family for life. This is the customary punishment in the community. In some cases, there are those who do not return the dowry, and it becomes a community memory (Abuhajim, Interview, 2023). It becomes the topic of conversation in the community and a burden for the family that deliberately broke the custom. There are events that happened a very long time ago, and are usually brought up by someone when the family has a similar problem, people who still know the "story" or "tragedy" of not returning the dowry to the man or woman, while this family has to return the dowry, then people will then mention past events as a "disgrace" and also a "misfortune" for this family: the dowry was not returned to the man or woman:

"People will always remember events that have happened in the past, for example this family canceled the marriage and did not return the dowry, they will become a gossip in the community, and they will not forget, especially if in the current life they experience the same thing, for example there is a marriage cancellation from one of the parties, and there is no return of the dowry, it will become a gossip that is always repeated" (Abuhajim, Interview, 2023).

Abuhajim's explanation gives an indicator that the return of the dowry, as an unwritten customary law, is preserved in the community and it would be a disgrace to ignore the return of the dowry, which should be returned according to Banggai customary law, as stated by Uda'a:

"The Law of Dowry Return is an unwritten law in the Banggai customary society. Customarily, there is no punishment for those who do not return the dowry as long as the matter is not taken to the law, i.e. the disputing parties file a lawsuit. If one of the

parties feels aggrieved and files a case in the name of customary law, that is another matter. Meanwhile, if we follow Banggai customary law, there is no punishment for anyone who does not return the Dowry" (Uda'a, Interview, 2023).

In Uda'a's explanation, the Law of Returning Dowry, is an unwritten customary law and has no rules on fines or specific punishments for those who do not return the Dowry that has been given due to the fault of one of the parties. However, the Law of Return of Dowry will become binding law, if one of the parties involved is dissatisfied and files a case to the Religious Court or District Court, and the decision will become binding law for both parties.

Uda'a's explanation is that an attempt to file a case with the Religious Court or District Court is usually preceded by several stages, namely: negotiations between the two parties, either through Customary Law officials at the village level. If there is no agreement, the negotiations are continued to the Village and Sub-District officials, and if there is still no agreement, then one of the parties who feels aggrieved will proceed to the legal court, either through the Religious Court or the District Court, with the offense referring to the Customary Law that applies in Banggai. As Uda'a explained below:

"If one of the parties feels aggrieved, then the last legal step is to complain to the Religious Court or District Court, but before that, peace will be tried through the Village Customary Officials. If there is no agreement, it usually goes to the Village Head or District Head, and if there is really no agreement, then one of the parties who feels aggrieved, will proceed to the Religious Court or District Court, with the offense of Banggai Customary Law" (Uda'a, Interview, 2023).

The Uda'a's explanation indicates that the Law of Returning the Dowry, although it is an unwritten law, is morally binding on those who are in conflict due to the separation of one of the parties and must return the Dowry that has been determined and given to the woman to be married. In some cases, although a small number have taken the formal legal route through state settlements, there have been one or two cases that have been litigated, although not many. This is because they are usually resolved through customary processes, either internally or involving the customary authorities in each village.

Abuhajim (Interview, 2023), as one of the elder of Banggai customary leaders, stated that dowry in Banggai tradition, apart from being a religious obligation (Islam), is also the "pride" of women and men. As a 'pride', the dowry is also a form of respect for the woman to be married, as well as her family. The dowry is also a sense of pride for the man, because giving it to his future spouse is a form of commitment and appreciation to his future wife, and to his future in-laws and the family. Indeed, marriage in the Banggai tradition is not just about marrying a man or a woman, but is rather welcoming to the whole family, both male and female.

The process of returning a dowry that is disputed to the Religious Court is common for couples who have been married, and the dowry has not been paid in full by the male party, usually the lawsuit also includes payment of the dowry. Banggai customary law defines "dowry" as something that needs to be paid by the man, and accepted by the woman. Preferably, the dowry should be something of worth that the woman can use in the future when she is married to a man. This is because a married woman will be fully entrusted to the man who has become her husband. Therefore, in Banggai society, a woman will move out of her parents' house, and will fully become a new member of her husband's family. The process of a woman leaving her home and handing over to the man is known in Banggai tradition by slaughtering a male goat, with the same requirements as a slaughter of sacrificial goat, known as "*Kambing Pindah*".

DISCUSSION

The analysis is based on Gustav Radbruch's Triad Theory.

There are three assumptions in Gustav Radbruch's legal perspective, namely: (1) legal certainty, (2) justice and (3) utility, purposiveness.

Legal Certainty

Gustav Radbruch suggested four fundamental points related to the meaning of legal certainty, namely: First, the law is positive, meaning that positive law is legislation. Second, the law is based on facts, meaning that it is based on reality. Third, the facts must be formulated in a clear way so as to avoid confusion in interpretation, in addition to being easy to implement. Fourth, positive law should not be easily changed.

Gustav Radbruch's opinion is based on his perspective that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically of legislation. Therefore, based on his opinion, positive laws that regulate human interests in society must always be obeyed even though the positive law is unfair.

Opinions regarding legal certainty were also expressed by Jan M. Otto as cited by Sidharta (2006: 85), namely that legal certainty in certain situations requires the following:

- 1) There are clear, consistent and accessible legal rules issued by state authorities;
- 2) Ruling (governmental) agencies apply the legal rules consistently and are also subject to and obey them;
- 3) The majority of citizens agree in principle with the content and therefore conform their behavior to them;
- 4) The independent and impartial judges apply these legal rules consistently as they resolve legal disputes; and
- 5) The judicial decisions are concretely implemented.

The five principles put forward by Jan M. Otto show that legal certainty can be achieved if the substance of the law is in accordance with the needs of society. The rule of law that is able to create legal certainty is a law that is born from and reflects the culture of society. This kind of legal certainty is called realistic legal certainty, which requires harmony between the state and the people in orienting and understanding the legal system.

According to Mertokusumo (2007: 160), legal certainty is a guarantee that the law is carried out, that those who have rights according to the law can obtain their rights and that decisions can be implemented. Although legal certainty is closely related to justice, law is not identical to justice. Law is general, binds everyone, is generalizing, while justice is subjective, individualistic, and does not generalize.

Legal certainty is the implementation of the law in accordance with its contents so that the community can ensure that the law is implemented. In understanding the value of legal certainty that must be considered is that the value has a close relationship with positive legal instruments and the role of the state in actualizing it in positive law (Manullang, 2007: 95).

Through the four components of legal certainty proposed by Gustav Radbruch and the Law of Dowry Return in Banggai Tradition, there is one component that is not fully fulfilled by the Law of Dowry Return, that is, the law is not included in the legislation. The second assumption, that the law is based on facts, can be fulfilled, because in the community, there are some couples who do not continue to the level of marriage, or the marriage is broken off in the middle of the journey, while the dowry has not been completed. Thirdly, the facts must be formulated in a clear way that avoids confusion in interpretation, as well as being easy to implement. When adapted to the practice of the Law of Dowry Return in Banggai, it is found that the law is very clear, with several alternative clauses, and if there is no agreement

between the two parties to the dispute, then the final recourse is through the Religious Court. Meanwhile, the fourth clause is that positive law should not be easily changed.

The study of the Law of Returning Mahar of the Banggai Tribe shows that until now, the law is still alive in the midst of society and is still used, because, the Law of Returning Mahar is considered as "dignity" of both men and women. With the law of Dowry Return, both parties will be protected towards the gift and agreement between the two parties.

Second, that the law is based on facts, which means it is based on reality. Third, that the facts must be formulated in a clear way so as to avoid confusion in interpretation, in addition to being easy to implement. Fourth, positive law should not be easily changed. To the present day, the Law of Dowry Return, although it has not been elevated to Positive Law and is still at the level of Customary Law, the Law of Dowry Return has not changed to the present day.

Justice

According to Radbruch, the principle of justice is sufficient if the same cases are treated equally. Radbruch said that the idea of justice is absolute, formal and universal or overall. What is fair to one is fair to the whole. Therefore, justice is often demanding and conflicting, and on the other hand, it requires generalization or equalization of punishment and reward for each party that has made an agreement. If one or both parties agree not to proceed with the marriage, or one of the parties annuls, then the family and customary authorities at various levels can provide a sense of justice to both parties. The law on the return of the dowry is currently applied fairly in the community, as any disputants are subject to the law in accordance with the customary law that applies to this present day.

The concept of justice is also associated with legal certainty as one of the objectives of law, as part of efforts to realize justice. The concrete form of legal certainty is the implementation or enforcement of the law against an action regardless of who is committing it. With legal certainty, everyone can predict what will be experienced if they take certain legal actions (Sagama, 2016). Certainty is needed to implement the principle of equality before the law without discrimination (Arfiani, et al, 2022). Certainty is an inseparable characteristic of law, especially for written legal norms. Law without certainty value will lose its value because it can no longer be used as a behavioral guideline for everyone. Certainty itself is referred to as one of the objectives of the law. Until now, the community considers the Law of Dowry Return to be still implemented properly (Abuhajim, Interview, 2023).

Expediency

Expediency is one of the three general precepts employed by Radbruch. This expediency is used to complete a legal concept. The three legal precepts help to determine the content of the law and result from different views in different countries. This expediency is as separate as possible from individual matters or personal interests.

Gustav Radbruch's perspective generally means that legal certainty does not always have to be given priority fulfilment in every positive legal system, as if legal certainty must exist first, then justice and expediency. Gustav Radbruch later revised his theory that the three objectives of law are equal. Gustav Radbruch, the German scholar of the three core values of law, once said that a good law is when it contains the values of justice, legal certainty and usefulness. This means that although all three are basic legal values, each value has different demands from one another, so that all three have the potential to conflict with each other and cause tension among the three values (Spannungsverhältnis), (Susanto, 2014). Therefore, the law as the bearer of the value of justice, Radbruch emphasized, can be a measure of whether the legal system is fair or not. The value of justice is also the basis of law as law. Justice has both normative and constitutive characteristics for law. In this case, justice

becomes the moral foundation of law and at the same time the benchmark of the positive legal system. Therefore, it is to justice that positive law is based. Meanwhile, it is constitutive, because justice must be an absolute element for the law. This means that a law without justice is a rule that does not deserve to be a law.

In realizing the purpose of law, Gustav Radbruch stated that it is necessary to use the principle of priority of the three basic values that are the purpose of law. This is because in reality, legal justice often clashes with benefits and legal certainty and vice versa (Fanani, 2003). Among the three basic values of legal objectives, when there is a conflict, then one should be sacrificed. For this reason, the principle of priority used by Gustav Radbruch must be implemented in the following order, the first is Legal Justice, the second is Legal Benefit, and the third is Legal Certainty.

The Law of Returning Dowry in Banggai Culture provides benefits to the community at large, both for those from the Banggai Tribe and those from outside the Banggai Tribe, because when someone is proposing, especially those with status as a tribe outside Banggai, a bond will be put forward in Banggai Customary Law. At any time, if there are problems before the marriage or after the marriage, there is an obligation to return the dowry if the woman breaks off the relationship, and the promised dowry will not be returned if the man breaks off the relationship and fails to proceed with the marriage. If the promised dowry has not been paid, then there is an obligation for the male party to provide the promised dowry according to the agreement or promise at the time of the proposal. This is because, basically, the dowry that has been determined at the time of the engagement is exposed and known to the public, both restricted and general public. There is no room for evasion for both parties, because each has witnesses, both the man and the woman.

CONCLUSION

Customary Law is a law that has been existed long before Modern Law was established in Indonesia. Customary law has contributed to forming an organized society, because it has a strong and solid foundation in the customary society itself. Carl Von Savigny stated that law, including customary law, is "the spirit of a nation". The Law of Returning Dowry in the Banggai Tribe, is part of a legal heritage that is still used to the present day, long before Indonesia was formed, to provide certainty for those who agree to make agreements and plans for marriage.

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