

ABSTRAK

Penganiayaan merupakan salah satu tindak pidana yang paling sering terjadi di Indonesia dan tidak jarang menarik perhatian publik. Penganiayaan dalam KUHP Nasional dirumuskan dengan hanya mencantumkan kualifikasi, tanpa adanya unsur dari tindak pidana tersebut. Ketentuan unsur penganiayaan tersebut dikembalikan kepada nilai sosial budaya masyarakat dan perkembangan ilmu kedokteran. Hal ini tidak terlepas dari fakta sosiologis yang menunjukkan bahwa tindak pidana penganiayaan juga diatur dalam hukum pidana adat, khususnya hukum pidana adat melayu Jambi. Dualisme pengaturan ini menimbulkan persoalan mengenai kedudukan sanksi adat dan sanksi pidana terhadap penganiayaan. Penelitian ini bertujuan untuk menguraikan persoalan dualisme sanksi tersebut dan membedah arah kebijakan kriminal mengenai sanksi adat dalam KUHP Nasional. Metode yang digunakan adalah *socio-legal research* dengan metode pengumpulan data berupa wawancara dan studi pustaka. Data tersebut kemudian diolah secara kualitatif dengan berbagai pendekatan, yaitu pendekatan undang-undang (*statute approach*), pendekatan konseptual (*conceptual approach*), pendekatan studi kasus (*case approach*), pendekatan historis (*historical approach*), pendekatan analitis (*analytical approach*), dan pendekatan *social-micro/constructivism approach*. Hasil penelitian menunjukkan bahwa terdapat perbedaan pandangan antara KUHP Nasional dan hukum pidana adat melayu Jambi dalam melihat penganiayaan, khususnya berkaitan dengan cakupan penganiayaan, unsur kesengajaan, dan ukuran akibat penganiayaan. Selain itu, keberadaan sanksi adat juga dapat menjadi salah satu alternatif pembedaan sebagai sanksi pidana tambahan dari perumusan tunggal pidana penjara terhadap penganiayaan dalam KUHP Nasional. Namun, penerapan sanksi adat terhadap penganiayaan melalui hukum pidana adat melayu Jambi terdapat problem, baik dari substansi, struktur, dan kultur hukum, ketika ditinjau dari arah kebijakan kriminal mengenai sanksi adat dalam KUHP Nasional saat ini.

Kata Kunci: Sanksi Adat, Tindak Pidana Penganiayaan, Hukum Pidana Adat Melayu Jambi, KUHP Nasional

ABSTRACT

Abuse is one of the most common crimes in Indonesia and often attracts public attention. Abuse in the National Criminal Code is formulated by only listing qualifications, without any elements of the crime. The provisions on the elements of abuse are returned to the socio-cultural values of society and the development of medical science. This is inseparable from the sociological fact that the crime of abuse is also regulated in customary criminal law, particularly the Jambi Malay customary criminal law. This dualism in regulation raises questions regarding the position of customary sanctions and criminal sanctions for abuse. This study aims to explain the issue of this dualism of sanctions and examine the direction of criminal policy regarding customary sanctions in the National Criminal Code. The method used is socio-legal research with data collection methods in the form of interviews and literature studies. The data is then processed qualitatively using various approaches, namely the statute approach, the conceptual approach, the case study approach, the historical approach, the analytical approach, and the social-micro/constructivism approach. The results of the study indicate that there are differences in views between the National Criminal Code and Jambi Malay customary criminal law in viewing abuse, particularly regarding the scope of abuse, the element of intent, and the extent of the consequences of abuse. In addition, the existence of customary sanctions can also be an alternative punishment as an additional criminal sanction from the single formulation of imprisonment for abuse in the National Criminal Code. However, the application of customary sanctions for abuse through Jambi Malay customary criminal law has problems, both in substance, structure, and legal culture, when viewed from the direction of criminal policy regarding customary sanctions in the current National Criminal Code.

Keywords: Customary Sanctions, Criminal Acts of Assault, Jambi Malay Customary Criminal Law, National Criminal Code