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The Problem of Indigenous Criminal Settlementin the Progressive Law Perspective

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Abstract: The purpose of this study was to analyze and explain the nature of the legal settlement of the Tolaki Tribal Customary Crime. Society is a social system that produces culture, giving birth to habits from that habit also giving birth to the rules of this rule which become the legal basis or better known as customary law. Customary law is a law that grows and develops in each region. a masterpiece that has a child of its purpose is to form a good and just life order, in behavior and creation in order to realize the welfare of the community itself.

Keywords: Customary Penalty, Progressive Law

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I. INTRODUCTION

The Indonesian state has a diversity of tribes, races, religions, and customs that are spread in the city and in the village. This diversity also becomes a wealth of potential that is different from their custom, but the basis and nature are one, namely Indonesia. So the customs of the Indonesian people are said to be various in meaning different in the tribal areas of the nation, but the meaning is permanent but one too, namely the basis and nature of its Indonesianness. Indonesia, which is a singular diversity, does not die, but always grows, lives and develops, always moves and follows the development of its nation's civilization and deals with the traditions of the people which is an amazing source for customary law.

Thus, customary law has become one of the important things that has liberated the Indonesian nation.[1]Reflection of the personality of a nation, is one manifestation of the soul of the nation concerned from the century, so every nation in the world has its own customs with others are not the same. Because of this inequality it can be said that adat is the most important element that gives identity to the nation concerned.[2]

Juridically, there are two kinds of settlement cases in legal matters, the first is known as litigation settlement, and the second is known as non litigation. The first intention is settlement in front of the court.[3] Settlement of cases in General Courts, Religious Courts or Mahkamah Syar'iyah, Military Courts, and State Administrative Courts. These forms of justice are managed by the state, and are often referred to as government judicial systems.[4]

Then the second purpose is the settlement of cases outside the court such as arbitration, mediation.[5]Courts like this are known as native administration of justice, village administration of justice, indigenous systems of justice, religious tribunals and villagetribunals.[6]

The development of the modern tolaki tribe does not affect the existence of tribal tribal customary law with consideration of community legal awareness and customary justice that is easy to access, fast, cheap, flexible structured and the prevailing norms are inherent in the tolaki tribe and are able to adjust the development of social change thus the author considered not to be a reason for the arguments of the dualism of the justice system but the author refers to the prularlime of the justice system that grows and lives in a society that is generally in Indonesia and especially in the community of the tolaki tribe.

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[1]Tongat. *Dasar-Dasar Hukum Pidana Indonesia Dalam Perspekt(Abdurrahman, 2009)if Pembaharuan*. Malang: UMM Press, 2008. p. 32.
[2]Wignjodipuro, Surojo. *Pengantar Dan Azas-Azas Hukum Adat*. Jakarta: Gunung Agung, 1983. p. 1.
[3]Abdurrahman. "Peradilan Adat Di Aceh (Sebagai Sarana Kerukunan Masyarakat)." Aceh: Majelis Adat Aceh (MAA), 2009.
[4]Anonimos. "Sistem Peradilan Adat Dan Lokal Di Indonesia, Peluang Dan Tantangan." Jakarta: Aliansi Masyarakat Adat Nusantara (AMAN), 2003. p. 5.
[5]Abdurrahman. *Op.Cit.*, p. 1.
[6]Anonimos. *Op.Cit.*,

II. STATEMENT OF THE PROBLEM

After describing the background of the problem, it can be formulated, namely: How is the nature of the legal settlement of the Tolaki Tribal Customary Crime?

III. THEORETICAL FRAMEWORK

A. Theoretical basis

1. Progressive Legal Theory

The definition as stated by Satjipto Raharjo[7] means progressive law is a series of radical actions, by changing the legal system including changing legal regulations so that the law is more beneficial in raising the dignity and dignity of human beings and their welfare.

The emergence of progressive law due to the concerns of Satjipto Raharjo regarding the state of law in Indonesia, severe legal observers clearly stated that the condition of law enforcement in Indonesia was very concerned. In 1970 it was known as the "judicial mafia" in the Indonesian legal vocabulary of the new order of law experiencing a shift from social engineering to dark engineering because the law was only used as a tool of power, in the era of legal reform it became a commercialization.

According to Satjipto Raharjo progressive law enforcement is implementing the law not just black and white words from the rules but according to the spirit and deeper meaning of the law or law. Law enforcers not only rely on intellectual intelligence but with spiritual intelligence. In his opinion, Savigny sees law as a historical phenomenon, so that the existence of every law is different, depending on the place and time of validity of the law. Law must be seen as the incarnation of a nation's soul or spirit (volkgeist).

2. Living Law Theory

The living law according to Eugen Erlich as quoted by R. Otje Salman Soemandiningrat[8] can be described in various statements. First, that the living law is found in habits that now apply in society, especially from the norms created by the activities of a number of groups where citizens are involved (from within and within, and in particular, from the norm groupings in members of society were involved).

The second is added, that the living law is a law that dominates people's lives, although it is not always transformed into formal, legal propositions. However, living law reflects the values of society (it was the 'living law' that is minated society 'life event though it has not always been reduced to formal, legal propositions. It reflected the values of society).

Third, the living law is an "inner order" of people's lives, are patterns of legal culture, which are never static.

3. John Rawls's Theory of Justice

John Rawls was quoted by Pan Mohamad Faiz[9] as a "liberal-egalitarian of social justice" perspective, arguing that justice is the main virtue of the presence of social institutions. However, virtue for the whole community cannot override or challenge the sense of justice of everyone who has gained a sense of justice. Especially the people who are weak are justice seekers.

Specifically, John Rawls, as quoted by Munir Fuady[10]. Developed an idea of the principles of justice by fully utilizing the concept of creation known as "original position" and "veil of ignorance".

Rawls's view places the same and equal situation between each individual in society. There is no differentiation of status, position or having a higher position between one another, so that one party with another can make a balanced agreement. That is Rawls's view as an "original position" which relies on the notion of reflective equilibrium based on the characteristics of rationality, freedom and equality in order to regulate the basic structure of society.

4. Legal System Theory

The legal system does not only refer to rules (codes of rules) and regulations (regulations), but covers a broad field, including structures, institutions and processes (procedures) that fill them and are related to living laws and legal culture (legal structure).

5. Historical School

Friedrich Karl von Savigny, as a pioneer of the school of history argues that law is a representation of the legal awareness of society (voklgeist).Law, actually comes from customs, a number of beliefs or beliefs and does not originate from legislators (legislators). Savigny's view was motivated by his counterproductive attitude

[7]Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: PT. Alumni, 1982. pp. 248-249.
[8]Soemandiningrat, R. Otje Salman. *Rekonseptualisasi Hukum Adat Kontemporer: Telaah Kritis Terhadap Hukum Adat Sebagai Hukum Yang Hidup Dalam Masyarakat*. 2 ed. Bandung: PT. Alumni, 2011.
[9]Faiz, Pan Mohamad. "Teori Keadilan John Rawls." *Jurnal Konstitusi* 6, no. 1 (April 2009): 135-149.
[10]Fuady, Munir. *Dinamika Teori Hukum*. Bogor: Ghalia Indonesia, 2010. pp. 94-95.

towards the codification of German civil law which made French law (Code Napoleon) a patron. In fact, according to him, the codification is very often contradictory, even diametrically, with the spirit and soul (legal awareness) of the German community. This is what then makes Savigny think that the law does not originate from lawmakers, but comes from a noble and dynamic people's soul.

B. Indigenous Peoples and Customary Law

In Indonesia there are also various terms about this customary law community, in general, customary law communities are often referred to as association (dihaar), isolated communities (koenjaranigrat), isolated tribes (Ministry of Social Affairs), primitive communities, remote tribes, population groups that vulnerable (kusumaatmaja), traditional communities, underdeveloped communities, indigenous people, indigenous people, shifting cultivators, forest encroachers, wild farmers, and sometimes as a barrier to development, there are also those who use the term customary law community because the emphasis is on the power to make arrangements and management of its citizens.[11]

Suryaman Mustari Pide[12] Distinguishes legal alliances in the form of kingdoms and communal legal alliances in the form of kingdoms and community law alliances, although these differences are more different in degree than fundamental differences, kingdom form, power centered on the king as the owner, king and kingdom one, everything in his kingdom is his, and theoretically power is unlimited.

Thus the unity of indigenous peoples is a group of people who live together because of territorial and functional ties, living in a certain area whose boundaries are clearly defined, having institutions in the form of a traditional ruler having institutions in the form of a traditional ruler, haveinstitutional settlement of the dispute, has a set of customary law norms.

1. Customary Law

The term customary law is a translation in the Dutch language adatrecht, and the term was introduced by Snouck Hugronje The term customary law was also expressed by several researchers such as Terhaar, in his anniversary-school-Batavia (1937) speech entitled that:[13]

"*Regardless of the insignificant part of customary law, which consists of village regulations, and the king's warrant, then the customary law is all the regulations stipulated in authority, and which in its implementation are just applied, meaning without the whole regulation in his birth it was declared binding at all, thus it can be said that the known customary law that was valid was only known and known from the decisions of the functionaries in the community, heads, judges, village meetings, guardians of the land, officials - religious officials, and village officials as it is decided within and outside official disputes, which decisions depend directly on structural ties and values in society, in relation to each other and reciprocal provisions".*

Based on the opinion of Ter Har, besslissingenleer theory also emerged in this theory that customary law is defined as a decision of legal officials, both village judges, village densities, religious officials and village officials who have authority and are obeyed by their customary communities the decisions of the village officials also have community values that live in an alliance of customary law (communal values).[14]

Koesno argued that the concept of customary law is a law that is seen as a concept, the existence of a psychology in our national culture. Its form is as a principle, rule or norm. In this form, customary law amounts to a normative handle or life guide.[15]

2. Nature of Customary Law

a. Traditional

This means that every provision always looks for relationships or contributions with what has happened in the past in succession in the statements of the tank's clever custom there is a provision that does not originate in a fairy tale from the past. The story is a justification for the existence of an institution or a provision of customary law.

b. Famorous, sacred

In connection with these characteristics in (a), which shows a respect for a tradition in implementing the provisions or customary law institutions as often as elements derived from the field of trust plays an

[11]Suartha, I Dewa Made. *Hukum Dan Sanksi Adat: Perspektif Pembaharuan Hukum Pidana*. Malang: Setara Press, 2015. p. 29.

[12]Pide, Suryaman Mustari. *Op.Cit*., p. 69.

[13]Nurtjahjo, Hendra. *Legal Standing Kesatuan Masyarakat Hukum Adat: Dalam Beperkara Di Mahkamah Konstitusi*. Jakarta: Salemba Empat, 2010. p. 10.

[14]*Ibid*.,

[15]Kurniawan, Joeni Arianto, ed. *Mohammad Koesnoe Dalam Pengembaraan Gagasan Hukum Indonesia*. Jakarta: Epistema Institute dan HuMa, 2013. p. 6.

important role. That everything gives sacred prestige to customary law. The sacred prestige by outsiders is often seen as a sanction that can be acted upon by the spirits of ancestors or gods at least as strong as the forces of the supernatural. For us, the sacred issue of prestige is not related to the question of sanctions but is a characteristic of customary law which does not prefer to use forced tools and emphasizes more on the area where in the expressive it is in the form of violence.

c. Flexible

The provisions and development of customary law are rooted in the experience and guidance of life that undergoes change and development. the law that "mandates" the development of society by itself is flexible in the sense that the various things surrounding a problem must be given full attention, before the principle concerned is applied to the basis of the decision. Each problem is surrounded by a group of things that are not always the same, the group usually gets various forms of problems depending on the place, time and circumstances, it is needed the nature of flexibility in customary law.

d. Dinamic

This trait is closely related to the nature of "flexibility" flexibility is the nature with regard to "sealing" from its principles "dynamik" is the nature with regard to "smooth development" as a statement of a sense of justice and appropriateness of the people as well as the development of customs and development of people's lives in society. Because it can happen that an institution that has not been in accordance with the age-old vocation, on the contrary to customary law plus new institutions to achieve new interests that are weathered or using the demands of the age.

3. Law of Indigenous Crime

To obtain a relatively complete picture of the legal definition of customary offenses, then the definition of adat and customary law in general will be stated previously. Judging from the development of human life, the occurrence of the law starts from the human person who is given by God mind and behavior. Behavior that is continuously carried out by individuals creates "personal habits". If the personal habits are imitated by others, then he will also become the habit of that person. Gradually, between one person and another person in the community unit also participates in the practice. Then when all members of the community carry out this habitual behavior, then gradually the habit becomes "customary" from the community. Thus, adat is the custom of the community, and community groups gradually make it customary which should apply to all members of the community supplemented by sanctions, so that it complies with Customary Law.So, Customary Law is a custom that is accepted and must be implemented in the community concerned. To maintain the implementation of customary law so that there are no irregularities or violations, then there are those among the community members who are tasked with watching over them. Thus, gradually these adat officers became Indigenous Heads. [16]

The term customary law is a translation of the term "adatrecht" which was first introduced by C. Snouck Hurgronje in his works entitled "DeAtjehers" and "Het Gajolan den Zijne Bewoner". [17] Snouck Hurgronjem uses the term adatrecht to show customary rules that result in law (dierechtgevolgenhebben).[18]

Van Vollenhoven in his book "Het Adatrecht van Nederlandsch-Indie", wrote that customary law is "a set of rules that apply to indigenous and foreign eastern groups who on the one hand have sanctions" (because it is a "science") and on the other hand is not codified (because it is "custom").[19]

The law of custom delict is an integral part of the customary law itself. In customary law there is no known legal division into 2 (two) groups, both private law and public law, as introduced by western law scholars who have a legal system based on legal classification. However, we find terms to designate offense customary law, such as "customary criminal law" which is formulated as follows:

"Laws that show actions and actions that must be resolved (punished) due to events and actions that have disturbed the balance of society. So it is different from western criminal law which emphasizes what events can be threatened with punishment and what kind of punishment, because the event is against the law."[20]

There are several acts which are offenses, both according to the Criminal Code and according to customary law. For example murder, injuring, and offenses against property (vermogensdelicten). With regard to the offenses, the people in the villages gradually accepted and considered naturally that the guilty person was punished by a district court with a crime determined by the Criminal Code. In addition, there are also acts which

[16]Setiady, Tolib. *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)*. Bandung: Alfabeta, 2008. p. 1.
[17]Soekanto, Soerjono. *Kedudukan Dan Peranan Hukum Adat Di Indonesia*. Jakarta: Kurniaesa, 1982a. p. 28.
[18]Soemandiningrat, R. Otje Salman. *Op.Cit.,* p. 108. See also Hurgronje, Christiaan Snouck. *De Atjehers*. Vol. 1, Batavia: Landsdrukkerij, 1894. p. 16, 357 and 386.
[19]Soekanto, Soerjono. 1982a. *Op.Cit.*,
[20]Hadikusuma, Hilman. *Hukum Perjanjian Adat*. Bandung: PT. Alumni, 1978. p. 8.

violate decency (zedendelicten) which are deemed insufficient to violate decency from the Penal Code. Therefore, customary efforts are still needed to restore the balance of disturbed communities. For example, against rape offenses, prison law alone is not enough because the community has not been cleansed of the impurities caused by the act. So in such circumstances, people in the villages usually do not stay silent. Even after a court imposes a body sentence or a fine to be paid to the state treasury, the people in their own village demand that efforts made by customary law be carried out to restore the balance of society.[21]

4. Characteristics of Indigenous Criminal Law and the Form of Sanctions

Sanctions come from the Latin word sanctum meaning affirmation (bevestiging or berkrachtiging) which can be positive in the form of gifts / gifts, and can be negative in the form of punishment, so sanctions are basically an incentive to do and not act, but the law also means the term witness as a negative sanction or punishment. In this connection, according to Sudarto, as quoted by I Dewa Made Suartha, interpreting sanctions in the form of criminal sanctions against pelangar norms, so that criminal law is declared as a system of negative sanctions. From here, it seems that criminal law is distinguished from other legal fields. Therefore, sanctions in the broadest sense can be classified into three types, namely:

1) As a condition recovery, which is usually found in the field of civil law;
2) As fulfillment of conditions, which are also common in civil law;
3) As punishment in a broad sense, including criminal and action;[22]

Customary law as a living law is conceptualized as a legal system that is formed and originates from the empirical experience of the community in the past, which is considered fair or appropriate and has gained legitimacy from traditional rulers so that it is binding or obligatory (normative). The process of adherence to customary law first arises because of the assumption that every human being from birth has been overwhelmed by norms that govern personal behavior for every legal act and legal relations he performs in a harmonious interaction. [23]

As is customary in customary law communities (unwritten law), it can be concluded that when and what elements to appear in accordance with adat delicts are difficult to find and depend on representations of collections (according to Levy Bruhl teachings), namely the mind in society, a combination of values which is in the community, always has the character of participation and analysis (participerendenanaliserend). [24]

Based on the opinions of these scholars, it can be assumed, that basically the offense of customary law is an act that violates the feeling of justice and propriety that lives in the community, so that it results in disturbing the peace and balance of society, and to restore the peace and balance disturbances, then customary reactions are needed.

An action might violate several legal norms at once, so that to restore legal balance several corrective actions must be taken, such as a guarantee of loss of safety to clean the community, and so on. And the purpose of all customary reactions (corrections) from all actions which neutralize violations of the law, is to restore legal balance. [25]

5. Settlement of Imposing Customary Sanctions

Disputes or conflicts are a social phenomenon in community relations. According to Randall Collins, conflict is a central process in social life. [26] So, in a social / community life, conflicts will certainly arise. In fact, conflicts can have positive implications, which can help individuals and groups in conflict become more closely related. This can create social cohesion that can encourage the formation of national stability. However, in reality, the positive side is rare, the negative side of conflict, such as the disintegration that often arises. [27]

In traditional (adat) societies, conflicts that arise usually are resolved by means of peace. This is done to prevent hostilities, disputes, disintegration, and so on. In resolving a conflict, each individual or group has their own way. According to Nader and Todd, there are a number of ways or stages that a person usually performs in resolving conflicts or disputes he faces, namely:[28]

[21]Soepomo, R. *Kedudukan Hukum Adat Di Kemudian Hari*. Jakarta: Pustaka Rakyat, 1959. p. 129.
[22]Suartha, I Dewa Made. *Op.Cit*., pp. 20-21.
[23]Soekanto, Soerjono. "Masa Depan Hukum Adat Di Indonesia." In *Seminar Penelaahan Pembaharuan Hukum Nasional, BPHN*. Jakarta, 1982. pp. 144-145.
[24]Setiady, Tolib. *Op.Cit.*, p. 346.
[25]Soepomo, R. *Op.Cit.*, p. 117. For South Sumatra see also Weddik, Willem Frans Lublink. *Adatdelictenrecht in De Rapat-Marga-Rechtspraak Van Palembang*. Bandung: A.C. Nix & Co., 1939.
[26]Nurtjahjo, Hendra. *Op.Cit.*, p. 44. See also Ritzer, George, and Douglas J. Goodman. *Teori Sosiologi Modern*. Translated by Alimandan. Jakarta: Kencana Prenada Media Group, 2008. p. 160.
[27]*Ibid*., pp. 44-45.
[28]Ihromi, Tapi Omas, ed. *Antropologi Hukum: Sebuah Bunga Rampai*. Jakarta: Yayasan Obor Indonesia, 2001. pp.210-211.

1. Leave it alone (lumping). In this stage, parties who feel they have been treated unfairly or disadvantaged have failed in an effort to suppress their demands. He makes a decision to ignore the problem or issue that raises his demands, and he continues his relationships with those who feel detrimental to this because of various possibilities, such as lack of information about the process of filing complaints to the court, lack of access to the judiciary, or intentionally not processed into court because it is estimated that the loss is greater than the profit (both material and psychological).
2. Avoidance. At this stage, those who feel disadvantaged choose to reduce relations with those who harm them or to completely stop the relationship. By evading, the issue that raises complaints is circumvented. In contrast to the first solution, where relations continue, the issue is deemed complete, in this second form, the aggrieved party avoids it and stops relationships for part or all.
3. Coercion. The next stage is coercion in which one party imposes a solution on the other party. This is unilateral. These imposing actions or threats to use violence, generally reduce the possibility of peaceful settlement.
4. Negotiation. At the negotiation stage, the two parties facing the decision are decision makers. The solution to the problems they faced was done by the two of them, they agreed, without the third party interfering. Both parties strive to be mutually convincing, so they make their own rules and do not solve them by starting from the existing rules.
5. Mediation. In this way, there are third parties who help both parties disagree to find an agreement. This third party may be determined by both parties to the dispute or indicated by the authorities for that. Whether the mediator is the choice of both parties or because it is appointed by a person who has power, the two parties to the dispute must agree that the services of a mediator will be used in an effort to find a solution. In small communities (communities) there can be figures who act as mediators, also acting as arbitrators and as judges.
6. Arbitration. The two parties to the dispute agreed to ask the third party, the arbitrator, and from the beginning to agree that they would accept the decision from the arbitrator.
7. Adjudication. Here, the third party has the authority to interfere with problem solving, regardless of the wishes of the parties to the dispute. The third party also has the right to make and enforce that decision, meaning that the decision seeks to be implemented. The process of resolving customary sanctions here is intended to address the settlement process carried out by customary law communities where customary law applies. Completion of customary delicts which results in disruption of the balance of the family and the community, although sometimes the case is handled by the state apparatus, it can also be reached by means of the person and / or the family concerned and the settlement association (organization).

As a country that is undergoing a legal transformation, towards a written legal system (statutory law system), Indonesia has been and is seeking a process of unification of its various unwritten legal systems that are in place in several parts of society. One of the main points of his concern is the existence of customary law, especially for sensitive fields.

As is known, that in addition to the law in the form of legislation as written law, also known as the existence of unwritten law that develops and is institutionalized in the pattern of behavior of the community. Therefore, for the sake of elaboration of the fields of customary law that are still valid in Indonesia, research needs to be carried out, especially through court decisions. In this case the court's decision is distinguished from the term jurisprudence because it will differ in meaning. Court decisions will only determine the law that applies or binds the litigants, while jurisprudence is the highest court decisions (Supreme Court) which have binding power in general, which are followed by the courts below them regularly. In legal discourse, such matters are referred to as precedents (judgemadelaw or caselaw), namely judicial decisions in certain cases followed by other courts as a basis for deciding similar cases.

In Indonesia, the precedent principle is not a norm, although there are several Supreme Court decisions which are often considered as jurisprudence. In legal practice in Indonesia, a judge is an institution authorized to determine inconcreto law, determine a law that applies to certain parties in a case. The decision of a judge is only binding on the parties who are tried by the decision in question, and do not bind to other people who are not parties. [29]

Customary law as a people's law which is a law that originates in the Indonesian cultural values, has strong legal foundations to be valid until now.

IV. DISCUSSION

A. The Nature of Tolaki Tribal Settlement

1. It is the Essence of the Tolaki Tribal Settlement of Osara and Kalosara

[29]Soemandiningrat, R. Otje Salman. *Loc.Cit.,* p. 150.

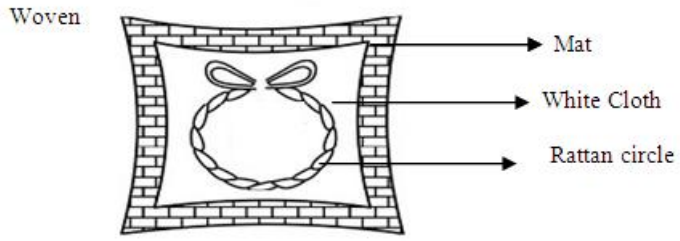
Customary law becomes a legal system that prioritizes dispute resolution or community problems with the principle of harmony or balance of the society itself, modern law or law from Europe which prioritizes dispute resolution in court with expensive and complicated costs while customary law is enough to bring together the parties in dispute continued review according to customary law by the traditional elders and then decided. Cases with this kind of customary law are very fast, cheap and efficient.

Likewise with the tolaki tribal community. Based on interviews with the ideal father[30] as a traditional figure in the sub-district of Wawotobi, he said that kalosara contained very deep philosophical values, namely;

1) The philosophical values of the osara and kalosara in the settlement of the tolaki tribal dispute or conflict
2) Kalosara customary law is an unwritten law that applies to the Indigenous Peoples of the Tolaki Tribe, so that for people who are unfamiliar with the Tolaki Tribal Community, to understand it is not easy, materially Kalosara Customary Law is implemented based on information from traditional leaders and decisions of customary institutions, but the essence of the material still refers to the sources of Kalosara Customary Law, as in the traditional proverb saying "adat" is filled, the institution is cast that the function of adat as Adat principle is not used as a basis, as a juridical basis from a decision according to adat. However, its function is a guideline, as an instruction for customary officers.
3) Kalosara Customary Law which is used as a living guide is not in written form, but in the form of a symbol. the symbol contained in Kalosara is a symbol of the existence of values that are always guided by individuals in the Tolaki tribe in behaving to be able to achieve the goals to be achieved. As a symbol of the existence of values, Kalosara is always displayed in events experienced by each individual Tolaki Tribe. Individual obedience of the Tolaki people towards Kalosara because of their trust in the value of Kalosara's sacredness, they still believe that someone who is not obedient to Kalosara will get reinforcements or accidents. Regarding the understanding of the value of Kalosara's sacredness according to the author is a method used by traditional elders at that time so that the community obeyed Kalosara. However, in fact, Kalosara has a philosophical meaning that is very useful in community life, especially the Tolaki tribe. To understand the philosophical meaning of Kalosara, it is necessary to have an in-depth study of history, the meanings of the symbols contained in Kalosara and the suggestions that are delivered directly in oral form, by people who are considered people who understand the Kalosara customary law such as Puutobu , Pabitara, Tolea which is a device from the Tolaki Customary Institution.

For the Tolaki tribe, Kalosara's values are a value system that is developed and practiced throughout the history of the Tolaki Tribe. Thus the lives of the people remain harmonious and united and spiritual physical prosperity. This means that these values guarantee well-being while proving that those values are true and best for the Tolaki tribe. These values are the cornerstones of life throughout its history.

The existence of Kalosara as a way of life for the Tolaki Tribal Community, can be traced from several historians including Erens E. Koodoh, Abdul Alim, Bachruddin, in his book entitled Tolaki Tribal Customary Law which states that the Tolaki Tribe Community has been in conflict prolonged disputes among fellow Tolaki tribes, although they did not explain the cause of the conflict or dispute. To end the conflict or dispute, a life guideline (kalosara) was held which determined how the people of Tolaki Tribe must behave in the community so as not to cause conflict and to create an orderly, peaceful and prosperous atmosphere. [31] The guidelines for behaving in realizing order and peace, known as Kalosara, are set by the two leaders, namely Raja Mekongga and Raja Konawe, not in written form, but in the form of circular symbols usually made of rattan, gold, iron, silver, thread, cloth white, root, pandan leaves, bamboo and from buffalo skin placed on white cloth and woven mats from leaves which are loaded with philosophical meanings. The following is a picture of Kalosara as a living guide to the Tolaki Tribal Law Society.



[30]Idaman. By Rahmanuddin Tomalili. *Filsafat dan Hukum Adat* (Mei 2018).
[31]Koodoh, Erens Elvianus, Abdul Alim, and Bachruddin. *Hukum Adat Orang Tolaki*. Yogyakarta: Teras, 2011. pp. 21-22.

2. The Value of Philosophy of Kalosara

Translation of Philosophical Values If Sara contains the Pancasila Ideology explained as follows:[32]

1) The divine and religious elements mean that the Almighty God is the creator of the universe, including humans, then in the consciousness of mankind God Almighty is worshiped as Belief (Belief): the center of hope that emanates the protection of the universe. Divine awareness in the mind of human conscience recognizes God as supernatural and suprarational. The belief in humanity is such a religious theism. God Almighty regulates (and binds) His creation (equality) with natural law in the form of: Natural law that is objective, physical, causal, absolute, universal and permanent (eternal); regulate and bind the universal and micro mechanisms of the universe in order to (guarantee) universal harmony and prosperity. This natural law functions in unlimited dimensions of space and time reflecting the sovereignty of God Almighty: and Objective Moral Law, Psycho Phisis (rokhani-material), theological, absolute, universal and permanent (eternal) regulating and binding human behavior / personality as a dignified subject (noble), with the potential of conscience. This moral law functions in unlimited dimensions of space and time for the welfare and physical happiness of every human person in the world and the end.
2) Elements of the universe as prawahana universal life, including humanity. The elements of the universe guarantee the life / existence of all living beings in it; especially for humanity: light, air, water, land, mining, flora and fauna provided for the welfare of the universe. The universe which is unlimited in its entirety is universally a prawahana and vehicle of life, including the territory of a nation; natural environment and natural resources, the field of science and technology and culture as well as raw materials for the creation and development of culture and civilization. It is recognized that phenomenal stability is experienced in the dimensions of space and time as an infinite vehicle of life, as a form that contains the mysteries of the universe, physics, and metaphysics investigated by scientists.
3) Elements of human subjects as individuals, ethnic groups, and humanity: as human resources (HR) as the main creatures on earth. Human subjects are blessed by the Almighty God, the highest potential, dignity and dignity: body-rokhani (body, senses, thought, intention, creativity, conscience) Humans are blessed with rights; at the same time with self-esteem awareness, dignity, understanding, who is aware of basic obligations; subjects who understand and are proud of their identity, love their neighbor and God with virtue and sincerity as a life service.
4) Elements of society carry a view of life that shows that each element or part concerned from a group and its type, in its existence is bound by groups and types. Each element or part that is free only has meaning in its existence because of the presence of elements or other parts in the group or type. In this situation his freedom changed to independence, meaning free within boundaries. A human being is an element or part of humanity. As an independent person, he will only have meaning in all its aspects thanks to other people who surround him, thanks to him living together with others. From that every person to have meaning in his existence in his life, there cannot be other people who surround him with other people who are in his environment determine the absolute meaning of his personal self. In such circumstances it is difficult to separate individuals from their communities. This view leads to this view of humanity, life is seen as in togetherness, one is important for another. Which in terms of medieval mepoko'aso (unity)
5) Elements of the cultural system, as a manifestation of the achievements and noble dignity of humanity. The cultural system functions as a vehicle for human life; communication media between people (language); for the faculties of human birth (science, technology, literature, art, philosophy). The cultural system known as civilization displays the image of achievement and dignity of humanity among all humans, (culture, universal civilization) reflecting the level of well-being, and human excellence; while reflecting the degree and achievement or progress.
6) The main points (teachings) of Kalosara philosophy reflect the range of values of the teachings that are fundamentally integral and ideal. That is, the value of Kalosara's philosophy contains insight and awareness of necessity; starting the scope of its value; The universe, human beings, society and cultural systems are the subjects of culture and moral subjects that carry out basic obligations before God Almighty. That is, the value of Kalosara contains insight and awareness of affinity: beginning of personal self as an independent subject with dignity in the togetherness of mankind and the universe with all its elements that guarantee the life of the universe: to its attachment to the cultural system. Such insight and awareness culminate with human belief / belief in the One Godhead which is a source of motivation for love and virtue. This whole value can be summed up in philosophical systematics: as ontology, epistemology, axiology.
7) The fundamental values contained in Kalosara's philosophy, as mentioned above function as fundamental, functional-dynamic and integral normative principles, in phenomenal dynamics and theology. This dynamic means that the process of human life experiences growth. More and more adults develop: through love-

[32]Idaman, and Rusland. "Islam Dan Pergeseran Pandangan Hidup Orang Tolaki." *Jurnal Al-Ulum* 12, no. 2 (Desember 2012): 267-302.

family work to serve the nation's nation, humanity before the Creator with idealism is more wise and virtuous and trust and hope get God's blessing (motivation, teleological, sincerity).

From the brief description above, it appears that the main teachings of Kalosara's philosophy as a philosophy of life provide a foundation of moral values, ideal insights on how human life contained in Kalosara's philosophical values are fundamentally and integrally radiating the identity of the dignity of religious theism, as the emotion of the soul towards personality identity of the Tolaki people. Based on the reality of Kalosara's philosophy as a philosophy of life.

This shows the value order in Kalosara's philosophy describes human life in harmony of the universe (with nature and natural law); with moral law (with fellow human beings, cultural systems, state systems, and culminating with an awareness of devotion to God the Almighty: Faith and love for God the Sovereign). In this universe harmony is also included and implied by the principles of law and order in the fundamental. This principle gives a signal that in Kalosara has similarities in Pancasila values.

As a legal norm, each individual Tolaki indigenous community is required to behave in accordance with the Kalosara customary law, without discriminating social status, "Konasara inae, iye pinesara, inae lia sara iye pinekasai"[33] Anyone who behaves well or behaves in accordance with the customary law of Kalosara to him will be respected, but whoever behaves rudely or not in accordance with the customary law of Kalosara to him will be abused or punished according to the author at least containing. Peace, harmonization, Restoration of balance, harmony, holiness, religion, Protecting victims, Equality before the Law, Preventing violations. Cultural components reflectively place the link between values and attitudes that affect the workings of the law or commonly referred to as legal culture or legal culture. It is this legal culture that functions as a link between legal regulations and the legal behavior of the entire community. thoughts, involvement of values and attitudes on one side with another. Component structure and substantive components. in the theory of legal systems put forward by Lawrence Friedman.

Values are a phenomenon that each time manifests itself in relation to what is good or right, while the norm refers to the realm of happiness. Norms are concretisations which are refined from the value system and what actually must exist when a decision about values is given a regulator or set (substantib component). Thus, the norm necessarily arises in orders, prohibitions, and authority. In other words, structurally value is the basis of norms regarding norms, what is thought about is how humans should behave. The scope of norms of substance is determined by value decisions which include statements about how the community should be well-organized. To support this research, the writer tries to explore and analyze the position of the tribal law of the tolaki tribe.

V. CONCLUSION

Based on the results of research and discussion it can be summarized as follows: The Nature of Completion of the Customary Law of the Tolaki Tribe is a life order as a means of regulating that has existed since human social relations began, namely the order of kalosara values philosophically depicts human life in harmony of the universe (with nature and law natural); moral law (with fellow human beings, cultural systems, state systems, and culminating with an awareness of devotion to God Almighty: Faith and love for God the Sovereign). In the harmony of the universe included and implied, the principles of law and obedience provide a signal that in kalosara have similarities in the values of the Pancasila.

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