
Women Protection and Decision of Customary Justice on The Ride of Cross Action (Women Protection Based On Law And Customary Justice In Atambua)

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Abstract

Rape can be occurred in all women from all side of life, occupations, age, and marital status, which was done alone or abuzz. The perpetrators of violence also come from various circles, work, age, social class and marital status.

In this case, the number of women violence against in Atambua is quite high. Sexual abuse cases and sexual harassment turned out most of the perpetrators are still related to blood with victims, such as biological father, siblings, uncle and neighbors. The cases of sexual assault against women in Atambua are resolved in customary.

However, any form of resolution, the act of violence of rape against viewed from various aspects still must be responded as a criminal act, for example the custom settlement of tallitan tafani still apply penal sanction in the form of penalty as one of the effort of restoration of good name, and also dignity for the victim.

Keywords: Atambua; Customary; Justice; Protection of Women; Rape

I. INTRODUCTION

Raymond A. Knight, in "Preventing Rape; What the Research Tell Us" (2011) argues that the average rapist does his actions not only because of sexual desire, but rather because of a power fantasy that can not be controlled. The lust for women is a symbol of patriarchal cultural hegemony that keeps women in a state of oppression. Rape is not because a man is carried away by sexual desire and not about sexual attraction at all but about how to control the victim and remove autonomous women and humanity (Knight, 2011). In submission fantasies in contrast to the reality of rape, the fantasist is in complete control and ascribes his own meaning to the exchange (Fitzgerald, 1999).

This opinion is enhanced by Mansour Fakhri that violence against certain sexes, mostly women includes physical violence such as rape and beating, to violence in finer forms such as sexual harassment and creation of dependence. There is a lot of violence women against that occurs because of gender stereotypes. That due to gender differences and gender socialization is so long, that women are physically weak and men are generally stronger then it does not cause social problems. Rape happens a lot, it is not because of the element of beauty, but because of the power and gender stereotypes attached to women. (Fakhri, 1996)

Legal system has been dominated by a patriarchal ideology, which has been defined as a set of beliefs that legitimizes male power and authority over women. The influence of patriarchal ideology in legal system has, in many instances, perpetuated this patriarchal arrangement of separate spheres,

treating it as a natural basis for decision making in many cases in public, dominant, political and work-related for the male; the other sphere private, subordinate, personal, and domestic for the female (Trafimow, 2002).

Woman is as an object. The study of advertising demonstrates that the ideal concept of beauty, is largely determined by the masculine and market forces. Idealization of beautiful is very closely related to the consumption of masculine desire such as must be sensual, erotic, berbodi plump, and so on. This conclusion is similar to the Berberick Study which then quotes in Viren Swami, that in the patriarchal society the Rights and Roles of the inferior women are determined by the superior male power. The tendency of the patriarchal society's attitude is crucial to the relationship between the patriarchal regime and the ideal concept of beauty (Berberick, 2010).

According to Macleod that colonization belongs to the patriarchy, the collection of political, material and imaginative systems that seek to invest power in men and marginalize women (Hethcox, 2016), by removing egalitarian cultures in local communities. The case of women's oppression in colonialism can be seen Ann Stoler's study entitled *Class Structure and Female Autonomy in Rural Java*. This study reveals a shift in the structure of agrarian rural communities into (transition) industries with the emergence of plantation and sugar industries that did not affect the equality between women and men. Stoler sees that patriarchy culture in Java is still strong, until in the industrial era, women are even more helpless. (Stoler, 1977) Citing on Ann Stoler, Adriana Veny and Ruth Indiah Rahayu added (Venny & Rahayu, 1993):

In Java Indonesia, fom the mid-19th century to the 1930s, women were mobilized to plantations in Deli and Suriname. They went as wives of male workers (contract laborers) and mothers of children who, upon adulthood, would work in the plantations. Women were also employed, receiving wages far lower than men's

Peter Carey reports that high-ranking residents in Yogyakarta often do obscene with the princesses of the palace. Stoler says, this behavior is typical of Europe after the French revolution. This act of moralism led to the anger of a Prince who later became known as Erucokro Diponegoro who had already felt hurt by the Netherlands's behavior toward the palace and the Javanese people (Carey, 2012).

Third world women or former colonies are still in the lowest structure of society in former colonial countries. This fact is confirmed by Mohanty who did a research entitled 'Under western eye' which states that third world women are a group of people who fared the same and helpless. They are often the explicit victims of certain political and economic systems. (Mohanty, 1984). In this condition, gender is one of the variables to measure the forms of relationships that exist. In turn, these criticisms contribute various solutions to the process of empowering women as those who often get unfair treatment, one of them is rape. Rape as a form of violence against women can be traced in depth with the construct of sexuality. (Abdullah & dkk, 2002)

Rape can be occurred in all women from all walks of life, employment, age, and marital status, alone or in a crowd (Hartono, 2017). The perpetrators of violence also come from various circles, work, age, social class and marital status. The facts of mass and brutal sexual assault and rape in May 1998 riots led to the state as part of the perpetrators of violence against women. This state violence is part of an episode of violence against women who has and continues to do so. (Abdullah & dkk, 2002)

The author has the assumption that masculine, feminist, and egalitarian cultures determine the judicial perception of rape. For example, the Breet Shandel study in Kenya (Africa) is highly masculine, proving that men are very much in control of judicial nets, and women are dominated by judicial dominance. Shandel exemplifies one of the cases, when a girl under the age of 16 is raped, and the perpetrator is only punished for 6 months in jail and a fine of shs. 100 (Shadle, 2008).

This empirical study in Africa can be fulfilled with Matarive Studies which highlight the Shona Customary Judiciary in Zimbabwe. Matarive, initially quite appreciative with some of the values which 'lost' in the modern judiciary, but it was rediscovered in custom justice, such as the concept of 'reconciliation' and 'recognize' in every dispute. Both concepts seek to restore losses in a dispute. However, according to Matarive, Shona Traditional Court still has an impartial gender bias towards women. He continued, in many cases, their opinions were not well represented. Even a priori, before the judiciary was held, women were in weaker position toward men because they always lost in every

decision (Monica Matavire, 2012).

McKinnon's opinion represents Modern Law, as well as the Study (empirical) by Matarive and Shandel representing Customary Law. We can conclude that women are in a weak position when dealing with the Law and Justice, both Modern and Customary Law. The author's assumpt as well as a foothold to say that in the case of rape women who are positioned as victims will be in an attenuated position. Based on rape case, one of the most severe of all traumas, causing multiple, long-term negative outcomes, such as posttraumatic stress disorder (PTSD), depression, substance abuse, suicidality, repeated sexual victimization, and chronic physical health problems (DG & R).

But as Hypothesis, it must be tested scientifically. Scientific method itself is useful to test the correspondence or conformity of statements in a theory or hypothesis with the objective reality that exists in the world. This benchmark will be used to test the assumption whether it is acceptable or not by using systematic, logical, rational, and coherent method (Sumardinta).

The authors will use the object of Atambua Custom Judgment as an empirical study material to test the assumptions. The reason why the authors use the Decision of Atambua Custom Judgment is based on two things. First, the subjective reason. The writer has proximity distance so the results of research are more leverage. Second, the objective reason. This reason will be explained in several ways, such as the indigenous peoples in Atambua became one of the indigenous communities who still have and at the same time selected customary institutions to solve the cases of violence against women (Nefi & All, 2016). The next reason, the case of violence in Atambua is high. *FFPA* (Caring for women and children forum) of Belu District just released the news that in the last five years, there are 36 cases of sexual violence against of children under the age. The cases were occurred from 2012 to 2016 in the form of sexual immorality and sexual harassment. Most of the perpetrators are still related to blood with victims, such as biological father, siblings, uncle and neighbors. The background of of sexual violence cases against the children because of the tradition of consuming liquor (alcohol) that still happened in the society so it is difficult to control themselves, the poverty, and less awareness of children protection, caused similar cases (Pede, 2016).

Then the cases of women sexual violence against in Atambua can be solved by custom. Although in practice, this settlement is being one of choice to solve the problem in customary based or the courts in general. However, according to the Custom Judgment, the punishment for perpetrators of rape is that the offender will be married with the victim. This punishment is fair, as an attempt to restore and account for the perpetrators against the victims, but according to Tien. et al, almost all the victim refused to be married, then the case will be left hanging (Handayani & dkk, 2016).

This background caused many of victims prefer to use the general court than the customary court. Tien gave an example of a child's rape case by her own uncle. At first, the father of the victim was urged to settle customarily, because it was still a blood relation, but he preferred to resolve the case through the public court and expected the perpetrator to be severe punished (Handayani & dkk, 2016).

Whatever the settlements, the act of violence of rape against women viewed from various aspects, it must be seen as a crime. For example custom settlement of *taloitan tafani* still applied as a penal sanction in the form of penalty as one of effort to restorate of good name, and also the dignity.

Rape Case, for Tien to be quite difficult to resolve. Tien sees that family factors as important aspect to encourage victims to talk about the sexual violence that they receive. Tien's opinion is similar with Lamber Missa Study which states that the victim is difficult to express her condition as a rape victim (Missa, 2010). This is because of the culture in the indigenous peoples that sexually is abusing, this case is almost be never processed. (Missa, 2010).

In line with the description above, the formulation of the problem of this research is entitled "*Criminal Rape in Atambua Customary Perspectives*".

II. METHOD

Methodology is a fundamental scientific and technological development. Therefore the purposes of the study are to reveal the truth systematically, methodologically and consistently by conducting analysis and building a construction (Soekanto & Mamudji, 1990). This paper is an analytical descriptive. Descriptive research aims to measure and look at certain social phenomena as well as

provide an overview of the symptoms of the subject matter discussed, then the analytical research aims to analyze the problems that arise in research (Soemitro, 1998).

The method used in the writing of this research is the method of sociological law research or sociolegal research. The approach used in this research is a socio-legal approach, it because this study focuses on social and legal phenomena in society (Soekanto S. , 1986). This research is to describe the reality in accordance with overall phenomenon in detail and analyze law as behavior of society.

III.DISCUSSION

Customary as a Positive Law System

The existence of customary law in positive law is not explicitly found, as Satjipto Rahardjo argument which is stated by C. Dewi Wulansari that "it is interesting to observe even though many people accept customary law as one source of law, but the Constitution is utterly not mention it". Even it can be seen in the description of the 1945 Constitution but if we read the explanation of the 1945 Constitution there is little clue about it (Wulansari, 2012). It is stated in the constitution of a state which customary is only part of its basic law. The constitution is only an unwritten basic law means that the rule that grows and maintained only in the practice term of state administration, although it is not written.

Customary law is a synonym of the unwritten law in the unstatory law. the law that lie as a convention in the body of a state legal entity (parliament, provincial council etc.) and so on, then the convention is included in the customary law group (Wulansari, 2012).

As quoted Franz and Keebet Van Vol-lenhoven, the customary law were well aware of the fact that the term custom was used in many regions of Indonesia to indicate an often undifferentiated whole constituted by morality, customs, and legal institutions. But they observed that within custom there are more or less institutionalized sets of rules and procedures for marriage, property and inheritance, political authority, and decision-making processes, which they discerned as elements of a legal nature (Benda & Benda-Becmen, 2011). Van Vollenhoven spoke of custom law as 'the totality of the rules of conduct for natives and foreign orientals that have, on the one hand, sanctions (therefore: law) and, on the other, are not codified (therefore: custom) (Burns, 2007)

The regulation of rape in customary law is classified in customary offenses. The offense of the custom according to Van Vollenhoven is an act that should not be done", although in fact the events or deeds are only a small (false) (Hadikusuma, 2003).

According to Ter Haar the offense is any kinds of interference of a group to the balance, in which any violation is come from group of tangible or intangible people which resulting reaction (according to customary provisions), a customary rejection. Because of the reaction, the balance must be recoverable (with the payment of money or goods) (Hadikusuma, 2003).

Tolib Setiady in the essence of Indonesian customary law explains that the customary law (Custom Offence) before 1934 illustrates that the customary law (punishment) is generally still as an act of revenge which is limited by a system of fines, the basic law of customary law is the principle of solidarity. (Setiady, 2013). If customary offense causes the disruption of the family balance, to resolve the claim or suit from the injured people, there must be a complaint. There must be a notice and request to be resolved to the customary head (Setiady, 2013).

The way to resolve the Offence Custom which resulted the unbalance family and society even sometimes the case until handled by the state tool, can be reached by:

personal and / or family. If act of indigenous offence happened in the village, in the settlement, in the place of work and others, the decision in order to restore the family balance or the community concerned directly taken at the place between the person itself or the family concerned and co-workers or between neighbors in the unity of the neighborhood and so on.

Completion of head of relatives or customary head

If the meetings held personally, the family or neighbors do not reach an agreement so that the case should be continued to the head of relatives or customary head. For example, the meeting of the rape case which is hold at the head of customary house and use a custom expert spokesman. The negotiations should include immaterial damages such as the forced of marriage, customary payment in fines, clean

village salvation for closing shame or death for life loss or customary agreement of adoptive siblings (MEWARI-lampung)

Settlement in the heads of village

If the settlement of the customary offense is committed by the head of a relative or customary chief of a special dispute between a kinship community which does not include the authority of the village head or also that still prevails among the people whose composition in the tribal group, the settlement of the customary offense of the mixed population is carried out by the Head Village ([Undang Undang No 5 Tahun 1979 Tentang Pemerintahan Desa, 1979](#)).

Settlement of Organization

In cities or in heterogeneous areas where the population have various associations or civic organizations that have such kind of stewardship arrangements as well as customary associations of indigenous peoples in the overseas, youth and feminist associations, or other religious societies can carry out a familial settlement of the act of offence which has occurred and which has resulted unbalance unity of the organizational associations concerned ([Setiady, 2013](#))

The process of implementation of the settlement and decision-making above is called as customary court. Customary justice law as Tolib Setiady's opinion is a rule of customary law which regulates how to do to settle a case and / or establish a legal decision of a case according to customary law. Traditional justice here is a peaceful settlement which is not a judiciary formerly that referred to as an indigenous court or swapraja court ([Setiady, 2013](#)). To measure the extent of the rules, the custom rules still have material strength that can be observed from:

- a) Are the structure of indigenous peoples still retained or changed?
- b) Do customary heads and traditional law instruments still act as customary law officers?
- c) Is there a case of settlement with a similar decision?
- d) Are the rules of customary law still retained or shifted or changed
- e) Does the customary law have contradiction to Pancasila and the 1945 Constitution and the politics of national law?

Ter Haar declares that the judiciary according to customary law implies that the judge continues to be responsible for fostering customary law in society, and if there is no existing jurisprudence or provision, it is no longer appropriate. The judge should decide upon his belief that it applies according to circumstances and community development. Thus the authority of judges within in the judgment according to customary law means giving form to something that is needed as a legal decision based on the legal system, social reality and the principle of humanity ([Setiady, 2013](#)).

Indigenous communities with the following custom law under conditions As long as such communities still exist and It may not conflict with the national interest and the State's interest; According to [Bedner and Huis \(2010\)](#), the recognition is unspecific and conditional: it is vague about what rights it refers to and whether these rights remain protected if they are out of tune with 'altered times and culture' and 'national interest' and 'the State's interest'. These norms can be concluded to be rubber norms which have diverse meanings and, consequently, the State can simply interpret them as it pleases to suit ([Bedner & Huis, 2012](#)).

In determining the decision by using customary law, the judge can make decision as follows:

- a) The decision is to equalize, the judge's decision contains the same contents as the last judge decision because the case is same and happened at the same time
- b) Decisions adjustment, containing content that is adjusted to the rules of traditional law
- c) Deviant decisions, containing contents that deviate from the rules of customary law which is applied
- d) The decision leaves aside, containing content that excludes the applicable customary law
- e) The decision of the middle way, containing the contents of the middle ground because of the unclear the information.

- f) Decisions change, containing the contents of changing the old customary law rules into new legal norms
- g) The refuses decision, contains the content of refusing the litigation because of the litigation is out of place.
- h) That is the kinds of judges' decisions that can be used in solving customary law cases.

The thing that distinguishes state formal criminal law and customary law is in the formal criminal law of the state that the convicted person is a person who is proven to conduct the criminal. Whereas the customary law of relatives of the perpetrator may be required to bear the punishment imposed for a crime committed by a citizen (Yani, 2016). If this is linked in the context of a criminal act of rape, then the perpetrator and their relatives or even his villager can have a common responsibility in the case.

The principle of customary court is resolving cases based on reconciliation in an indigenous people community. The legal spirit of the principle is in accordance with the characteristic of customary law that tends to prioritize balance (*evenwicht* or *harmonie*) in cosmic life. In this case, it is relevant to look at the opinion of Supomo as quoted by Bushar Muhammad (Law, 2005):

“Every customary court decision is meant to restore the disturbed balance due to the violation of customary law (custom Offenceen). The recovery is necessary since the violation is a unilateral act by an individual or a group of individuals, which threatens, offends, or disturbs the balance in society materially or immaterially to a person or to a united community. Such actions result in custom reactions that are believed to be able to restore the disturbed balance through various ways”

According to Achjani, justice in the customary law is defined as the process of finding and solving problems that occur on a criminal case in which the involvement of the victim, community, and offender becomes an important factor in the restoration, reconciliation, and assurance of the improvement efforts sustainability (Zulfa, 2010).

The reason for incriminating the criminal in customary law if the offense is committed by a person who is domiciled or dignified in the fellowship, the higher the position of one's dignity in the fellowship, the more severe the nature of the offense committed against it. So it will be more severe punishment that will be imposed on him. In this context when it is associated with the actions of a person who commits a rape then the one who will be noticed is the status of the perpetrator and the status of the victim will be a consideration for the custom leader in dropping his verdict. This is what distinguishes in the positive legal system that does not distinguish the status of the perpetrator and the victim so that the status or essence of humans do not get a share in judge consideration. Philosophically, this is far from the scope of judges' thinking so that its consideration only concerns the circumstances of the perpetrator / victim at the time of the event.

Crime of Rape in the Perspective of Customary Law

The regulation of rape in customary law is categorized in the customary offense. It is categorized as a misconduct of the government which is divided into the Mistake of Decency and Decency as follows; courtesy, single girl and woman, holding, capturing woman, queen, marriage, wife's, adultery (Hadikusuma, 2003).

According to Van Vollenhoven, Offence Custom is an act that should not be done, although in fact the events or deeds are only a small false (Hadikusuma, 2003). According to Ter Haar offense is any interference of a group to the balance, where each violation in the form of tangible or intangible group, resulted in a reaction (a small size according to customary provisions), a customary custom, and because of the reaction then the balance must be recoverable (with the payment of money or goods) (Hadikusuma, 2003).

Tolib Setiady in the essence of Indonesian customary law explains that the customary law (Custom Offence) law before 1934 illustrates as follows "that the customary law (punishment) according to customary law is generally still as an act of revenge which is limited by a system of fines, the basic law of customary law is the principle of solidarity" (Setiady, 2013). In the case of a customary offense resulting in disruption of the family balance, to settle the claim or suit from the aggrieved party there

must be a complaint, there must be a notice and request to be resolved to the customary head (Setiady, 2013).

The process of implementation of the settlement and decision-making of cases handled above, is called customary court. Customary justice law as Tolib Setiady's opinion is a rule of customary law which regulates how to do to settle a case and / or establish a legal decision of a case according to customary law. Traditional justice here is a peaceful settlement of the matter not a judiciary formerly referred to as an indigenous court or swapraja court (Setiady, 2013).

Ter Haar declares that the judiciary according to customary law implies that the judge continues the responsibility for fostering customary law in society, and if there is no existing jurisprudence or provision, it is no longer appropriate. The judge should decide upon his belief that it applies according to circumstances and community development. Thus the authority of judges within in the judgment according to customary law means giving form to something that is needed as a legal decision based on the legal system, social reality and the principle of humanity (Setiady, 2013).

The Word of Allah SWT in the Qur'an "If you punish human by using law, please be fair (An Nisa: 58). Then the word of Prophet Muhammad SAW about the judge's verdict is "There are three kinds of judges, a judge who enters heaven and two of them will go to hell. The judge who enters heaven is the judge who knows the right (the law) and decides if that is right. The judge who knows the rights but decides not the right side, this judge goes to hell. The judge who decides while he does not know the (legal) rights in the case the judge will also go to hell " (Hadist Abu Daud, et.al).

The rules of traditional customary law, customary, unifying and unleashing, not pre-existence, not generalize, open and flexible, the occurrence of offenses which cause the reactions and corrections, accountability of errors, their place of entry (Setiady, 2013). As the verse above is "a door to adjust in relation to the settlement of transcendental dimension to resolve the rape case by applying differences of principle in the formal criminal law with customary law in the following cases:

First, in the customary law of the perpetrator's relative may be required to bear the punishment imposed for a crime committed by a citizen. Second, in the customary offense, the existence of an element of error or negligence is not an absolute requirement or does not require verification at all. The sufficient disruption of the balance of society is an indigenous offence that asked an effort of custom to make balance the situation again or the return of equilibrium disturbed due to errors or omissions committed by a person or group of people in the community. Third, in customary law it does not recognize and distinguish that the problem of offense. The society help, persuade, and participate to recover the disturbed situation. Fourth, customary law sees the existence of a deed is considered to violate the general tranquility so it is a delicacy, so not based on the element of error or forgiveness.

Fifth, in the minds of customary law which is seen as incriminating or lightening is the presence or absence of customary reactions arising from the action. In addition there is the right of Asyl (the right to protection) for the person who commits offense can be free from family retaliation if he can run and take refuge in the house to a special place such as the king's palace, customary head home or the house of a religious employee.

Sixth, the reason for incriminating criminal law in customary law if the offense is committed by someone who is domiciled or dignified in the fellowship, the higher the position of one's dignity in the fellowship the more severe the nature of the offense committed against it. So the more severe the punishment that will be imposed on him.

Some of the points of excess in customary law mentioned above contain the concern of human existence that concerns the status of the perpetrator and the victim of rape.

Criminal Acts of Rape in Customary Judgment Perspective at Atambua

Interviewing session with Ms. Florentina Abuk, A.Md who is known as Mama Folo (As Atambua's customary council and chairman of Aman Atambua Safe House) that is hold on January 3, 2018 at 13.00.

Researchers; *Was there ever been a case of customary rape settled over the past one or two years?*

Mama Folo; on May 23, 2014 (as recorded in the Atambua Women's Safe Home data) which the case was resolved customarily by HALUEN. The perpetrator was Albertus Suri, while the victim named Julia Claudia Permata P.Etni who was a high school student. The customary completion process was carried out by the request of the victim's family and the perpetrator. The reason was that the perpetrator is a high school teacher and the victim is the student, then the matter is considered as a disgrace to the family and even the Atambua community as a whole. So the court was conducted by the custom chairman and other custom council including me itself as an custom council at that time ruled for the perpetrator that he was charged with a sum of Rp.25.000.000, - (twenty five million rupiah) and two pieces of custom fabric.

Researchers: Are each case of customary rape being resolved customarily?

Mama Folo; Not all cases are resolved customarily because currently there is a regulation that regulates things that should not be brought into the customary domain, namely: terrorism, corruption, drugs and rape.

Mama Folo in her further explained said that this is the obstacle that makes it not dare to bring rape into the custom process. In this interview, Mama FOLO also expressed his disagreement with the custom chairman and other ranks when mediating the sexual crimes case. It is because in his view, the decision of custom that is always dominated with men. The protection perspective does not touch as expected (eg the giving of animals by the perpetrators to the victims and their families were not handed over to the victims directly but some were handed over to the custom elders, some were handed over to the customary treasury and residents of the community), so that women and families received only a small portion of the supposed part, even though the procession of animal slaughter and the division of meat animal to the customary chief (head of the hamlet) called 'Dato',

The ceremony has a meaning:

First, as a process of village cleaning due to violations of order in indigenous communities,

Secondly, as an announcement to the community in the community that the woman who was a victim of the sexual crime has suffered the fate of not being a virgin anymore, so the traditional ceremony is considered as the process of sewing back the torn fabric "Hatomak Tais". In the context of the announcement, it is understood to be an advocate to the citizens that if such an ill-fated woman as an adult later has been known to her future husband that the woman is not a virgin any longer, therefore the prospective husband should no longer question the woman's past. The consequences for the woman and his family is obliged to pay or hand over some blankets and *muti* (traditional necklace) which in *Tetun* local language is called "Morten", to the future husband and his family. In this context, the payment of the *belis* by the husband is repaid by the woman as a future wife to her future husband because the bride is not a virgin again due to the rape that occurred in her past.

In the customary procession, the perpetrator and the family are required to provide *sopi* (traditional beverage) drinks to be served in the banquet. Then the customary oath is done against the perpetrators in front of the custom chairman and the whole community not to repeat the action or the crime.

Mama Folo also explains that in the days of royalty punishment given to perpetrators of sexual crimes or adultery is harder than if sexual crime committed to the royal family, then the punishment is the beheading. But this sanction is no longer valid since the arrival of the Dutch. While the punishment which is still prevailed around 1974 is adultery. If done by a father to his son or a brother to his sister in law by sucking pork intestine. When adultery is committed between married and married men or women is to suck the pig's intestine and then tie the knot together and inhaled simultaneously by turning back to one another.

However, the sanctions gradually faded over the times, especially since the arrival of the Dutch. The sanctions changed with the granting of customary fines in the form of sanctions of animal giving to victims and families and the model of sanctions is still preserved to this day which is called by paying (custom fines) in the Atambua community almost every region still maintains this sanction model although in each region there is a difference of procession and number of *belis* and its type according to agreement.

The result of interview with Bunak Village Custom Chairman, Mr. Lois Partila Salsila and his

representative named Frans Sarasen on January 5, 2018 in the home of the Custom chairman in Bunak Village at 11.00

Researcher: Has there been any customary cases of rape resolved in your area?

Mr Lois Partila replied: There was once a case which was later confirmed by its representative around 2015, a rape committed by Tim-Tim member to the adult Tim-Tim woman (exodus from Tim-Tim after post-referendum) who chose Indonesia. It is because Atambua was a border area between Tim-Tim and Indonesia. Many of the Tim-Tim members live in the area of Buna village. The case was initially resolved customarily but the case was detected by the authorities and taken to the police and proceeded to the district court of Atambua. In the process of resolving the trial, I as the custom chairman also attended as a witness questioned and in the settlement by the district court, the judge considered the customary fine by imposing a criminal sanction of imprisonment and a fine of 5 million to the perpetrator to be handed over to the victim and his family. The amount of 5,000,000, - is the conversion of the price of a buffalo).

As a note: In this interview the researcher has difficulty in understanding the language used by custom chairman who cannot speak Indonesian. So that the researcher make the interview ends.

The result of interview with Custom Village Chief of Wemeda of East Malaka Regency, named Moses Kabosu on February 28, 2018 at 16.00 in the traditional house "Lae Tua"

Researcher: is there a crime of rape in your territory?

Custom Chairman Mr. Moses Kabosu replied; It is happened in my territory and the victim is my nephew.

How to solve the settlement process?

Custom Chair; the custom ceremonial process is done here, (custom house called Old Lae) attended by custom figures and community leaders, also attended by the perpetrator and his family and his tribe. In the customary talks it was agreed that the perpetrator be fined 10 animals, gold and silver in accordance with the customs of wemeda village, if the raped is a noble derivative or the status of girl among noble "nain nuan veto" (kingship). However, because silver and gold are difficult to obtain, the value of the object is converted with some money and some animals consisting of cows, goats and pigs.

Once agreed upon the amount of fines that should be handed over by the perpetrator and his family even the result of a collection of citizens in his tribe handed over to the victim, then proceed with the procession "KIUK" slaughterhouse cooked by the family of the perpetrator to be handed to custom house "Lae Tua" to eat together.

Followed by the event of **kokoi ulun** ie shaved off the hair of the perpetrators to bald as a symbol of perfect repentance, to provide a deterrent effect, followed by drinking **sopi** as an endorsement event that custom sanctions have been agreed and executed and not allowed to be taken to where in the sense of the victim and family should not take the case anywhere. Closed with a drink of **sophi** drinking event, which is interpreted as the endorsement of the settlement of the case.

Researcher; What is your consideration to solve the case by emphasizing that this case should not be left out or involving other parties outside the custom community?

Custom Chair; The shame or disgrace of women as victims and is considered to have tarnished the clan / tribe, so it should not spread to be the subject of conversation, especially the victim is a family or derivatives of noble or **nain nuan veto** "

Researcher; Is the custom settlement in this case of rape the same as in ancient times?

The custom chairman replied; It is Similar with the last process. The process is the same since the hereditary takes place in the old custom house Lae, the only thing that changed is the type of animal that in ancient times is usually a fine animal is a mean (gold) mutin (silver) and krau (buffalo). Because times have changed and then buffalo, gold, and silver are hard to obtain today so that the conversion into a sum of money and animals in the form of cattle, goats and pigs. In ancient times as the closing of the implementation of the custom process the perpetrator drank the blood of pigs, as an endorsement of the case .

In the community of Wemeda social stratification is known. The granting of custom fine is adjusted to the status of the perpetrator or victim, so the higher the social status of the perpetrator and the victim then the higher the custom fine imposed on the offender.

As a note, the researcher learned from experience during the interview on February 26, 2018 with the custom chairman of Desa Bunak where the researcher had difficulty understanding the language used by the custom chairman and his representative so this time the researcher brought the translator ie the ex-Frater who became teachers in the district East Malacca. The journey from East Malaka to the village of Wemeda was a heavy field. The researchers are required to bring some conditions proposed by the chairman Custom through Mr. Bere as an informant who knows the position of the Wemeda tribal region / custom chair of Wemeda village. The materials were such as a tail of chicken, betel nut and sopi drink. After arriving at a custom home location, the researcher understands the function of the material, based on the interpreter's explanation that the blood of the chicken as an offering to the spirit of the ancestor, betel nut to be served to some residents who have been waiting in a custom round house called 'lae tua'

This custom house called "Lae Tua" is a gathering place or a place of completion of all matters related to order in a custom society. The presence of researchers at custom homes was greeted by the sisters of a custom chairman, started from the eldest sister and other brother as a custom chairman. In the interview, the custom chairman used the local language (luckily, we brought an interpreter who was a teacher and an ex-Frater so that he had no trouble understanding what the custom chairman had said.

In the translator's speech (ex-Frater) obtained the information that in ancient times the case of rape or obscenity is considered an event that disturbs the balance in indigenous communities. According to him, the rape in the understanding of indigenous communities in the Wemeda village has a very broad meaning. The meaning was not only about forced intercourse but harassment by holding the hands of girls / women who already married, has been regarded as rape, so still must be given sanctions that the number of sanctions depend on the deal, regardless of whether the perpetrator is willing to marry the victim or not.

IV.CONCLUSION

The criminal act of rape in the perspective of custom court judgment of Atambua has different perspectives between one with to other areas, where the sanctions and the process is also different. In remote areas or quite distant from urban areas, custom processions are carried out in custom homes with animal slaughter rituals, haircutting of actors to the bald as a repentance and ended by eating together and drinking sopi as a cover of rituals that are considered as endorsements of a custom verdict. It means that the verdict is binding parties and agreements not to take the case out of the custom community. In a customary perspective the criminal act of rape has a broader meaning, rape involves not only intercourse but by simply holding a hand or touching a woman's body that is not her right to be considered an act of rape that damages her balance in a custom community. The sanction given to the offender depend on the status of the victim if the raped is a noble derivative or girl's status among noble "*nain nuan veto*" (kingship), paying fines of 10 animals (buffalo), gold and silver in accordance with customs in Wemeda village (since ancient times, but nowadays the value of the object is converted to a certain amount of money and some animals consisting of cows, goats and pigs. The fine remains true regardless of the perpetrator and the victim is willing to marry

Whereas in an urban area the settlement is simpler without going through custom processions or rituals and it is not carried out in a custom house but in the house of the victim or one of the victims' families which was attended by the perpetrator and his family, the victim and his family, the custom Board, the Village Head and Aman Atambua House as a Foundation for Observers of Women and Children in the region of Atambua. The sanction decision given to the perpetrator was that he had to pay a fine in *Tetun* local language called "*Morten*" in the form of a number of custom blankets, *muti* (custom necklace) and animal (as agreed in custom talk). In one case the criminal act of rape the perpetrator shall be fined in the form of amount Rp 25.000.000 and custom woven fabric.

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